



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**THANET EXTENSION OFFSHORE WIND FARM**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Business, Energy & Industrial Strategy

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Examining Authority

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**11 September 2019**

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# OVERVIEW

## File Ref: EN010084

The application, dated 26 June 2018, was made under section 37 of the Planning Act 2008 (PA2008) and was received in full by The Planning Inspectorate on 27 June 2018.

The Applicant is Vattenfall Wind Power Ltd.

The application was accepted for Examination on 23 July 2018.

The Examination of the application began on 11 December 2018 and was completed at 11-59pm on 11 June 2019.

The Proposed Development would comprise an offshore wind generating station of up to 340 Megawatts (MWe) installed capacity, formed as an extension to and located in waters surrounding the existing Thanet Offshore Wind Farm, a new cable connection to the shore at Pegwell Bay, a substation, and electricity transmission system connection at Richborough in Kent.

The Proposed Development would be located in waters adjacent to the entrance to the Thames estuary, where navigational safety and the maintenance of access to nationally significant port facilities are NPS and MPS policy-supported and give rise to important and relevant considerations of great weight. As a consequence of sustained concerns from ports, shipping, pilotage and statutory regulatory bodies relevant to shipping and navigation operations, the Applicant materially changed the application during Examination to introduce additional measures, aiming to improve navigational safety outcomes.

Having considered the application, the changes to it and all related evidence with care, it is the ExA's primary conclusion that the Proposed Development as changed does not reduce additional navigational risk to As Low As Reasonably Practicable (ALARP) and, for this reason, does not comply with designated or relevant NPS (and MPS) policy. A decision in accordance with PA2008 s104(3) and in accordance with relevant NPS policy should therefore be a decision to withhold consent. Further, the ExA also concludes under PA2008 s104(7) that the adverse impacts of the Proposed Development, largely in relation to the weighty matters of navigational safety and the strategic benefits of retaining efficient access to resilient port operations in the Thames estuary, outweigh the benefits of the development.

The ExA also notes that an element of the case for compulsory acquisition of land onshore for a cable alignment and substation site has not been met but that, other matters aside, this does not indicate against the grant of development consent.

## Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should withhold consent. If the Secretary of State decides to give consent, a draft Order which represents the best form of Order achievable in the Examination process is attached.

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# **1. INTRODUCTION**

## **1.1. INTRODUCTION TO THE EXAMINATION**

- 1.1.1. The application for the Thanet Extension Offshore Wind Farm (the Proposed Development) [[APP-001](#)][[APP-003](#)] was submitted by Vattenfall Wind Power Ltd (the Applicant) to the Planning Inspectorate on 27 June 2018 under section 37 of the Planning Act 2008 (PA2008) and accepted for Examination under section 55 of the PA2008 on 23 July 2018 [[PD-001](#)].
- 1.1.2. The Proposed Development is more fully described in Chapter 2, but in summary terms comprises:
- an offshore wind generating station of up to 340 MWe installed capacity formed as an extension to the existing Thanet Offshore Wind Farm, in waters surrounding it;
  - a new cable connection to the shore in Pegwell Bay;
  - a new onshore cable connection to
  - a new substation at Richborough Port; and
  - a new connection to the electricity transmission system at Richborough Energy Park near Sandwich, Kent.
- 1.1.3. The location of the Proposed Development is shown at Figures 1.1 and 1.2 in the Environmental Statement (ES) Volume 1, Chapter 1 [[APP-036](#)] and on the Offshore and Onshore Land Plans, final updated versions of which were received at Deadline 1 (Offshore Revision C) [[REP1-056](#)] and Deadline 2 (Onshore Revision D) [[REP2-011](#)]. The onshore element of the site lies in the administrative county of Kent and is wholly in England.
- 1.1.4. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Ministry of Housing, Communities and Local Government (MHCLG) in its decision to accept the application for Examination in accordance with section 55 of PA2008 [[PD-002](#)].
- 1.1.5. On this basis, the Planning Inspectorate on behalf of the SoS for the MHCLG agreed with the Applicant's view stated in the application form [[APP-003](#)] that the Proposed Development is an NSIP, as it is for an offshore generating station expected to have an installed capacity of up to 340 MWe and so requires development consent in accordance with s31 of PA2008. The Proposed Development meets the definition of an NSIP set out in s14(1)(a) and 15(3) of PA2008.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

- 1.2.1. On 2 October 2018, Rynd Smith, Stephen Bradley and Jessica Powis were appointed as the Examining Authority (ExA) for the application under s61 and s65 of PA2008 [[PD-004](#)].

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

- 1.3.1. The persons involved in the Examination were:



- Persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.
- Affected Persons (APs) who were affected by a compulsory acquisition (CA) and / or temporary possession (TP) proposal made as part of the application and objected to it at any stage in the Examination.
- Other Persons (OPs), who were invited to participate in the Examination by the ExA because they were either affected by it in some other relevant way or because they had particular expertise or evidence that the ExA considered to be necessary to inform the Examination.

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.4.1. The Examination began on 11 December 2018 and concluded at 11.59pm on 11 June 2019
- 1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

### **The Preliminary Meeting**

- 1.4.3. On 9 November 2018, the ExA wrote to all Interested Parties (IPs), Statutory Parties and OPs under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and early hearings [[PD-006](#)], outlining:
- the arrangements and agenda for the PM;
  - notification of two hearings to be held in the early stage of the Examination;
  - agendas for the early hearings;
  - an Initial Assessment of the Principal Issues (IAPI);
  - the draft Examination Timetable;
  - availability of RRs and Examination documents; and
  - the ExA's procedural decisions.
- 1.4.4. On the basis of a request from the French Government to participate in the Examination that was made after the closure of the RR period, the ExA wrote to it providing a copy of the Rule 6 letter and additional information for participants from outside the United Kingdom (UK) [[PD-007](#)]. (Further information about this request to join the Examination is set out below from paragraph 1.4.46.)
- 1.4.5. The Preliminary Meeting (PM) took place on 11 December 2018 at Building 500, Discovery Park, near Sandwich, Kent. An audio recording [[EV-004](#)] and a note of the meeting [[EV-041](#)] were published on the Planning Inspectorate National Infrastructure website<sup>1</sup>.

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/thanet-extension-offshore-wind-farm/>

- 1.4.6. The ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in a letter to all Interested Parties (IPs), Statutory Parties and OPs under Rule 8 of the EPR (The Rule 8 Letter) [[PD-008](#)], dated 18 December 2018.

## Site Inspections

- 1.4.7. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.8. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and/ or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.
- 1.4.9. The ExA held the following USIs:
- **USI1**, 30 October 2018, to inspect viewpoints to the Proposed Development from Dover to the South Thanet coast and the landfall location (Pegwell Bay Country Park) [[EV-001](#)];
  - **USI2**, 10 and 13 December 2018, to inspect the landfall location (Pegwell Bay Country Park and Stonelees Nature Reserve) and viewpoints to the Proposed Development on the North Thanet coast [[EV-008](#)];
  - **USI3a** and **b**, 18 February 2019, to inspect residential properties at Ebbsfleet Lane, the landfall location (Pegwell Bay Country Park) [[EV-040](#)];
  - **USI4**, 18 March 2019, to inspect views across the Thames estuary from the coastline between Clacton-on-Sea and the Naze Tower, Essex, reviewing the basis for the Applicant's establishment of its study area boundary for Seascape, Landscape and Visual Impact Assessment (SLVIA)[[EV-043](#)]; and
  - **USI5**, 15 April 2019, to inspect viewpoints to the Proposed Development from Reculver to Margate on the North Thanet coast [[EV-062](#)].

A site note providing a procedural record of each USI can be found in the Examination Library under the above references.

- 1.4.10. The ExA held the following ASIs:
- **ASI1**, 18 February 2019, to inspect the onshore cable alignment, substation and transmission system connection on private land at Richborough [[EV-010](#)];
  - **ASI2**, 15 April 2018, to inspect port facilities on private land and land within secure port perimeters at Tilbury and Tilbury 2 (Port of Tilbury London Ltd.) and at DP World London Gateway (London Gateway Port Ltd.) [[EV-044](#)].

- 1.4.11. An itinerary for each ASI can be found in the Examination Library under the above references.
- 1.4.12. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant sections of this Report.

## **Hearing Processes**

- 1.4.13. Hearings are held in PA2008 Examinations in two main circumstances:
- To respond to specific requests from persons who have a right to be heard - in summary terms:
    - where persons affected by compulsory acquisition (CA) and/or temporary possession (TP) proposals (Affected Persons) object and request to be heard at a Compulsory Acquisition Hearing (CAH); and / or
    - where IPs request to be heard at an Open Floor Hearing (OFH).
  - To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under Examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear, through Issue Specific Hearings (ISHs).
- 1.4.14. The ExA held hearings to ensure the thorough Examination of the issues raised by the application. All hearings were held at Building 500, Discovery Park near Sandwich, a location within 5km of the landfall for the export cables for the Proposed Development.

### **Issue Specific Hearings into the dDCO**

- 1.4.15. ISHs under s91 of PA2008 were held on the subject matter of draft Development Consent Order (dDCO) as follows:
- **ISH7**, 21 February 2019 [[EV-009](#)] (Annex A) (Notice), [[EV-017](#)] (Agenda), [[EV-037](#)] [[EV-038](#)] (Audio); and
  - **ISH9**, 18 April 2019 [[PD-010](#)] (Annex B) (Notice), [[EV-065](#)] (Annex B) (Agenda), [[EV-060](#)] (Audio).

### **Issue Specific Hearings into Further Matters**

- 1.4.16. ISHs were held on the following further subject matters and dates:
- **ISH1** on International Issues, 11 December 2018 [[PD-006](#)](Annex G) (Notice and Agenda), [[EV-005](#)] (Audio);
  - **ISH2** on Maritime, Shipping, Navigation and Safety Issues, 12 December 2018 [[PD-006](#)](Annex H) (Notice and Agenda), [[EV-006](#)] [[EV-007](#)] (Audio);
  - **ISH3** on Environmental, Ecology, Habitats Regulation Assessment (HRA), Physical, Construction and Other Matters, 19 February 2019 [[EV-009](#)] (Annex A) (Notice), [[EV-013](#)] (Agenda), [[EV-026](#)] [[EV-027](#)] [[EV-028](#)] (Audio);

- **ISH4** on Landscape and Visual, Seascape and Historic Environment Issues, 19 February 2019 [[EV-009](#)] (Annex A) (Notice), [[EV-014](#)] (Agenda), [[EV-029](#)] [[EV-030](#)] (Audio);
- **ISH5** on Maritime, Shipping, Navigation and Safety Issues, 20 February 2019 [[EV-009](#)] (Annex A) (Notice), [[EV-015](#)] (Agenda), [[EV-031](#)] [[EV-032](#)] [[EV-033](#)] [[EV-034](#)] (Audio);
- **ISH6** on Fishing and Fisheries, 20 February 2019 (evening) [[EV-009](#)] (Annex A) (Notice), [[EV-016](#)] (Agenda), [[EV-035](#)] [[EV-036](#)] (Audio); and
- **ISH8** on Environmental, Shipping, Maritime, Fishing and Other Matters, 16 and 17 April 2019 [[PD-010](#)] (Annex B) (Notice), [[EV-064](#)] (Annex A) (Agenda), [[EV-048](#)] [[EV-049](#)] [[EV-050](#)] [[EV-051](#)] [[EV-052](#)] [[EV-053](#)] [[EV-054](#)] [[EV-055](#)] [[EV-056](#)] [[EV-057](#)] (Audio).

### **Compulsory Acquisition Hearings**

1.4.17. Compulsory Acquisition Hearings (CAH) were held under s92 of PA2008 on:

- **CAH1**, 21 February 2019 (Notice), [[EV-018](#)] (Annex F) (Agenda), [[EV-039](#)] (Audio); and
- **CAH2**, 18 April 2019 [[PD-010](#)] (Annex B) (Notice), [[EV-066](#)] (Annex C) (Agenda), [[EV-058](#)] [[EV-059](#)] (Audio).

1.4.18. All persons affected by compulsory acquisition (CA) and/or temporary possession (TP) proposals (Affected Persons or APs) were provided with an opportunity to be heard at CAH1 (in respect of the Applicant's case for CA and TP in the round) and CAH2 (in respect of individual objections).

### **Open Floor Hearing**

1.4.19. An Open Floor Hearing (OFH) was held under s93 of PA2008 on the evening of 19 February 2019 [[EV-009](#)] (Annex A) (Notice), [[EV-012](#)] (Agenda), [[EV-025](#)] (Audio). All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

1.4.20. Whilst requests to be heard were received, no IPs attended the hearing. It was closed ten minutes after its advertised start time. In this respect, it should be noted that most local community interest arose from the fishing community, members of whom were invited to and did attend both ISH6 (Fishing and Fisheries) and a relevant session in ISH8 (Maritime, Shipping, Navigation and Safety Issues).

### **Written Processes**

1.4.21. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this Report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to

them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.

1.4.22. Key written sources are set out further below.

### **Relevant Representations**

1.4.23. Fifty-nine relevant representations (RRs) were received by the Planning Inspectorate [[RR-001 to RR-059](#)]<sup>2</sup>. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapters 4 to 6 of this Report.

### **Written Representations and Other Examination Documents**

1.4.24. The Applicant, IPs and OPs were provided with opportunities (in summary) to:

- comment on RRs;
- make Written Representations (WRs);
- comment on WRs and other documents and comment on comments by others;
- summarise their oral submissions at hearings and respond to the ExA's hearings action points in writing;
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
  - A Report on Implications for European Sites (RIES) [[PD-018](#)]; and
  - A commentary on the dDCO [[PD-017](#)].

All Examination procedures and the dates on which they occurred and are set out in Appendix A.

1.4.25. All WRs and other Examination documents have been fully considered by the ExA. The issues that they raise are considered in Chapters 4, 5, 6, 7 and 8 of this Report.

### **Local Impact Reports**

1.4.26. A Local Impact Report (LIR) is a Report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited by and submitted to the ExA under s60 PA2008. PA2008 s104 requires the SoS to take specific account of duly submitted LIRs in the decision on the application.

1.4.27. LIRs were received from the following relevant local authorities:

- Kent County Council (KCC) [[REP1-098](#)];
- Dover District Council (DDC) [[REP1-091](#)]; and

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<sup>2</sup> All RRs can be viewed from this link to the National Infrastructure Planning Website. Additionally, they are individually indexed in the [Examination Library](#).

- Thanet District Council (TDC) [[REP1-128](#)].

1.4.28. The Applicant, IPs and OPs were invited to comment on LIRs at D2 and relevant local authorities had an opportunity to respond to comments at D3. The LIRs and comments upon them have been taken fully into account by the ExA in all relevant Chapters of this Report.

### **Statements of Common Ground**

1.4.29. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs or OPs, recording matters that are agreed (and where relevant, matters that are not agreed) between them.

1.4.30. The ExA requested SoCGs in the procedural decisions attached to the Rule 6 Letter [[PD-006](#)] (Annex E), and these requests were confirmed following discussion at the PM. Table 1.1 below summarises the ExA SoCG requests for SoCGs and responses to them.

1.4.31. In addition to the SoCGs, the Applicant has prepared Statements of Commonality summarising key issues arising from SoCGs throughout the Examination. The most recent of these submitted at D7 distinguish between:

- SoCGs relevant to topic groups D (Air Navigation), E (Ports, shipping and commercial sea navigation) and F (Recreational sea use, boating and yachting) considerations [[REP7-031](#)] (in respect of which there were still a wide range of unagreed matters at the end of the Examination); and
- SoCGs on all other topics [[REP7-016](#)] (where whilst there were some areas of reservation and disagreement, there was also widespread agreement between the Applicant and relevant IPs and OPs).

1.4.32. The ExA has broadly maintained the Applicant's division of SoCGs by type and extent of agreement. It has re-categorised SoCGs from the Marine Management Organisation (MMO) and RiverOak Strategic Partnership (RSP) (in respect of Manston Airport) as 'other' SoCGs, as they are not directly related to the complex of maritime, shipping and navigation issues considered further in Section 5.2 of this Report below.

1.4.33. In referring to the Applicant's Statements of Commonality (as distinct from the SoCGs individually), whilst these are generally useful documents, it should be noted that the ExA does not agree with all of the summarised positions set out within them. There are instances in which the Applicant has recorded agreements, in which a review of an individual signed SoCG identifies that matters remain unagreed. There are also instances in which the Applicant incorrectly records the Deadline of the most recent relevant SoCG. It follows that the Statements of Commonality cannot be taken to be universally reliable.

(Table 1.1 follows. Report text continues on page 13.)

**Table 1.1: Summary of ExA SoCG Requests and Responses**

	<b>ExA SoCG request</b>	<b>Applicant Response<sup>3</sup></b>	<b>ExA Response</b>
A	<p><b>Natural environment and Habitats Regulation Assessment</b>, between the Applicant and Environment Agency (EA), Natural England (NE), Marine Management Organisation (MMO), National Trust (NT), Kent Wildlife Trust (KWT), Royal Society for the Protection of Birds (RSPB), relevant local authorities, relevant representatives of overseas public authorities and any other IP/ Statutory Party responsible for the management of the natural environment, habitats and species.</p>	<p>All relevant IPs and OPs engaged and SoCGs provided, with the exception of:</p> <ul style="list-style-type: none"> <li>• NT where the Applicant identified that NT interests in this topic are fully delegated to its tenant, KWT; and</li> <li>• RSPB which by a letter of 21 January 2019 [<a href="#">REP1-150</a>] confirmed that it no longer wished to be engaged in detailed matters.</li> <li>• Overseas public authorities where the Government of France did not respond to the invitation to participate.</li> </ul>	<p>The ExA is content with the scope of the SoCGs provided on this topic.</p>
B	<p><b>Access, highways and transportation effects</b>, between the Applicant and relevant highway authorities.</p>	<p>All relevant IPs engaged and SoCGs provided, with the addition of:</p> <ul style="list-style-type: none"> <li>• Highways England (HE).</li> </ul>	<p>The ExA is content with the scope of the SoCGs provided on this topic and is grateful for the addition of Highways England to the process.</p>

<sup>3</sup> The Applicant's summarised responses on all SoCGs and topic groups except D(Air Navigation), E (Ports, shipping and commercial sea navigation) and F (Recreational sea use, boating and yachting )can be found in the D7 General Statement of Commonality [[REP7-016](#)]. A separate subject-specific Statement of Commonality was provided at D7 for SoCGs relevant to the maritime and air navigation topic groups D, E and F [[REP7-031](#)].

	<b>ExA SoCG request</b>	<b>Applicant Response<sup>3</sup></b>	<b>ExA Response</b>
C	<b>Other consequential onshore effects</b> between the Applicant and relevant local authorities.	All relevant IPs engaged and SoCGs provided.	The ExA is content with the scope of the SoCGs provided on this topic.
D	<b>Air navigation</b> between the Applicant and River Oak Strategic Partners (RSP)(Manston Airport) the Civil Aviation Authority (CAA), NATS en route plc (NATS), and any other Interested/Statutory Parties responsible for airport, airfield, air navigation or aviation services.	All relevant IPs and Statutory Parties engaged and a SoCG was provided with RSP. SoCGs were not provided with: <ul style="list-style-type: none"> <li>• CAA, who did not respond; and</li> <li>• NATS who confirmed that they did not object and had no matters to record in a SoCG [<a href="#">REP5-029</a>] Annex A.</li> </ul>	The ExA is content with the scope of the SoCGs provided on this topic.
E	<b>Ports, shipping and commercial marine navigation</b> between the Applicant and Port Authorities and operators, UK Chamber of Shipping (UKCoS)and shipping interests, the MMO, Trinity House Lighthouse Service (TH), the Maritime & Coastguard Agency (MCA), pilotage, and any other Interested/Statutory party responsible for maritime navigation, safety and shipping.	All relevant IPs engaged and SoCGs provided.	The ExA is content with the scope of the SoCGs provided on this topic.



	<b>ExA SoCG request</b>	<b>Applicant Response<sup>3</sup></b>	<b>ExA Response</b>
F	<b>Recreational sea use, boating and yachting</b> between the Applicant and the MMO, TH, the MCA and any other Interested/Statutory party involved in recreational sea use.	All relevant IPs engaged and SoCGs provided, with the addition of: <ul style="list-style-type: none"> <li>Royal Yachting Association (RYA).</li> </ul>	The ExA is content with the scope of the SoCGs provided on this topic and is grateful for the addition of RYA to the process.
G	<b>Fishing and fisheries</b> between the Applicant and the MMO and IPs/ Statutory Parties involved in fishing.	All relevant IPs engaged and SoCGs provided.	The ExA is content with the scope of the SoCGs provided on this topic.
H	<b>Historic environment</b> between the Applicant and Historic England (HistE), English Heritage, relevant local authorities, the MMO and any other IPs /Statutory Parties involved in the historic environment or archaeology.	All relevant IPs engaged and SoCGs provided, with the exception of: <ul style="list-style-type: none"> <li>English Heritage. The ExA had requested inclusion on the basis of proximity between the Proposed Development and the English Heritage managed Richborough Roman Fort and Amphitheatre site. However, on the basis that HistE raised no concern about the exclusion of English Heritage, the ExA did not pursue this request further.</li> </ul>	The ExA is content with the scope of the SoCGs provided on this topic.

	<b>ExA SoCG request</b>	<b>Applicant Response<sup>3</sup></b>	<b>ExA Response</b>
I	<b>Recreational use of the foreshore</b> between the Applicant and NT, KWT, relevant local authorities and any other IPs /Statutory Parties involved in the management of Pegwell Bay and other foreshore areas.	All relevant IPs engaged and SoCGs provided.	The ExA is content with the scope of the SoCGs provided on this topic.
J	<b>Seascape, landscape and visual impact assessment</b> between the Applicant and relevant local authorities, HistE, NE and relevant representatives of Overseas Public Authorities.	All relevant IPs and OPs engaged and SoCGs provided, with the exception of: <ul style="list-style-type: none"> <li>Overseas public authorities where the Government of France did not respond to the invitation to participate.</li> </ul>	The ExA is content with the scope of the SoCGs provided on this topic
K	<b>Energy undertakers</b> between the Applicant and NG (NGET and NGG), NLL and any other IPs /Statutory Parties involved in energy transmission or distribution.	All relevant IPs engaged and SoCGs provided.	The ExA is content with the scope of the SoCGs provided on this topic. It should be noted that whilst BritNed [ <a href="#">AS-012</a> ] could have been within scope for a SoCG under this topic area, it did not participate in the Examination until the SoCG process was well under way.  (continued)

ExA SoCG request		Applicant Response <sup>3</sup>	ExA Response
			The ExA monitored BritNed's position and no matters were raised that merited production of a late SoCG.
L	<b>Military affairs</b> between the Applicant and Ministry of Defence (MoD).	The Applicant engaged with the MoD which wrote, declining to prepare a SoCG as it had no matters of outstanding concern [ <a href="#">REP3-046</a> ].	The ExA is content with the Applicant's action on this topic.

(Table 1.1. Report text continues on Page 13.)

1.4.34. Whilst Table 1.1 above indicates the ExA's satisfaction that the subject matters and scope of the SoCGs addressed its needs, the SoCG process did not bring all relevant matters to agreement. Substantial outstanding areas of disagreement are recorded below, first in relation to maritime, shipping and navigation issues, and then in relation to other issues in the Examination.

### **Maritime, Shipping and Navigation SoCGs**

1.4.35. By the end of the Examination, most of the IPs or OPs engaged in this subject matter had concluded and signed a SoCG with the Applicant. However, a number of these continued to record a substantial absence of agreement on a range of contended issues. Others did not sign a SoCG.

1.4.36. The following bodies had concluded and signed SoCGs with the Applicant with outstanding matters un-concluded, reserved or unagreed:

- Estuary Services Ltd (ESL) SoCG Revision D [[REP7-049](#)], signed but with most matters un-agreed;
- London Gateway Port Ltd (DP World London Gateway) (LGPL) SoCG Revision B [[REP6-086](#)], signed but with most matters un-agreed (this document was prepared jointly with but signed separately from the SoCG for Port of Tilbury London Ltd (PoTLL));
- Maritime and Coastguard Agency (MCA) SoCG Revision B [[REP6-013](#)], signed but with some matters un-agreed;
- Port of London Authority (PLA) SoCG Revision D [[REP7-048](#)], signed but most matters un-agreed;
- PoTLL SoCG Revision B [[REP6-106](#)], signed but with most matters un-agreed;
- The Royal Yachting Association (RYA) SoCG Rev C [[REP3-044](#)], with matters generally agreed and signed, but with one outstanding disagreement;
- Trinity House Lighthouse Service (TH) SoCG Revision B [[REP6-025](#)], with matters generally agreed and signed, but with some outstanding disagreements on key matters; and
- UK Chamber of Shipping (UKCoS) SoCG Revision C [[REP7-032](#)], signed but with some matters un-agreed.

1.4.37. Matters recorded in signed SoCG(s) as agreed have been taken fully into account by the ExA as agreed matters in all relevant Chapters of this Report. Where matters are recorded as unagreed, they have been addressed as part of the ExAs consideration of unresolved objections to the Proposed Development.

1.4.38. In addition to the SoCGs recorded above an SoCG was sought but not concluded with the London Pilots Council (LPC) who, despite direct engagement with the Application and in the Examination up to May 2019, did not conclude and sign a SoCG with the Applicant.

### **Other SoCGs**

1.4.39. By the end of the Examination, the following bodies had concluded and signed SoCGs with the Applicant with all matters broadly agreed:

- Environment Agency (EA) SoCG Revision B [[REP3-036](#)];
- Highways England (HE) SoCG Revision A [[REP1-019](#)];
- Historic England (HistE) SoCG Revision C [[REP6-007](#)];
- Kent County Council (KCC) SoCG Revision C [[REP6-009](#)];
- KEIFCA SoCG Revision D [[REP6-008](#)];
- Natural England (NE) Site Selection and Alternatives (SS&A) SoCG Revision D [[REP6-019](#)];
- RSP (Manston Airport) SoCG Revision C [[REP8-024](#)]; and
- Thanet District Council (TDC) SoCG Revision B [[REP3-045](#)].

1.4.40. The following bodies had concluded and signed SoCGs with the Applicant with outstanding matters un-concluded, reserved or unagreed:

- Dover District Council (DCC), SoCG Revision B [[REP3-086](#)], with matters generally agreed and signed, but with a few outstanding reservations;
- Kent Wildlife Trust (KWT) SoCG Revision C [[REP6-010](#)], with matters generally agreed and signed, but with a substantial number of outstanding disagreements;
- Marine Management Organisation (MMO) SoCG Revision D [[REP6-011](#)], signed but with outstanding disagreements;
- National Trust (NT) SoCG Revision [[REP6-014](#)], signed but with outstanding disagreements;
- Natural England (NE) Ornithology SoCG Revision E [[REP6-015](#)], signed but with outstanding disagreements;
- Natural England (NE) Other Topics SoCG Revision D [[REP6-016](#)], signed but with outstanding disagreements and un-concluded discussions;
- Thanet Fishermen’s Association (TFA) SoCG Revision B [[REP6-024](#)], signed but with outstanding disagreements;

1.4.41. To the extent that they record agreed matters, these SoCG(s) relating to other matters have all been taken fully into account by the ExA in all relevant Chapters of this Report.

1.4.42. In addition to the SoCGs recorded above, SoCGs were sought but not concluded with the following entities:

- The French Government, from whom no written responses to the Applicant’s requests for a SoCG were received;
- Ministry of Defence (MoD) who made clear that it considered there to be no matters of concern and hence no need to enter into a SoCG with the Applicant [[REP3-046](#)];
- Ramac Holdings (Trading) Ltd (Ramac) SoCG Revision A [[REP6-067](#)], Ramac signed this SoCG but the document is expressed as subject to contract in respect of an incomplete option contract and a tripartite agreement with tenants. Neither the option contract nor the tripartite agreement was concluded by 11 June 2019 and so the ExA has not placed any weight on the signed SoCG with Ramac;
- Royal Society for the Protection of Birds (RSPB), who indicated that it was no longer actively participating in the Examination [[REP1-150](#)].

## Written Questions

- 1.4.43. The ExA asked three rounds of written questions.
- First written questions (ExQ1) [[PD-012](#)] were linked from the Rule 8 letter [[PD-008](#)], dated 18 December 2018, ranging across most Examination issues.
  - Second written questions (ExQ2) [[PD-016](#)] were issued on 10 April 2019, again ranging across most Examination issues.
  - Further to the ExA's procedural decision<sup>4</sup> of 4 April 2019 [[PD-013](#)], third written questions (ExQ3) [[PD-019](#)] were issued on 16 May 2019. These were not foreshadowed in the Rule 8 Letter and Examination Timetable as originally issued but were added to the Timetable to ensure that the ExA, IPs and OPs were able to understand the proposed a Structures Exclusion Zone (SEZ) and related material change to the application, in circumstances where documentation had arrived too late to be fully considered at the April hearings.
- 1.4.44. A request for further information and comments under Rule 17 of the EPR were issued:
- R17Qs [[PD-020](#)] were issued on 30 May 2019 to address unresolved matters bearing on biodiversity, the dDCO, CA and TP and maritime navigation.
- 1.4.45. All responses to the ExA's written questions and comments on them have been fully considered and taken into account in all relevant Chapters of this Report.

## Requests to Join and Leave the Examination

- 1.4.46. The following persons who were not already IPs requested that the ExA should enable them to join the Examination at or after the PM:
- The Government of France made a written submission after the deadline for the submission of RRs but requested to become involved in the Examination [[OD-002](#)]. On that basis, the ExA agreed that the Government of France could be an OP and wrote to invite it to participate in the Examination on 9 November 2018 [[PD-007](#)]. Following this invitation, the Government of France was treated in all respects equivalently to an IP, including being invited to the PM and to relevant hearings. The following entities made written representations and are considered in this Report collectively as representing the Government of France:
    - Point Focal Convention d'Espoo, Direction interrégionale de la mer Manche Est – mer du Nord [[OD-002](#)];
    - Ministère de la Transition Ecologique et Solidaire, Direction interrégionale de la mer Manche Est - mer du Nord [[OD-009](#)];
    - Agence Française pour la Biodiversité/ Ministère de l'Environnement, de l'Energie et de la Mer, Direction de l'eau et de la biodiversité, Sous-direction du littoral et des milieux marins [[AS-006](#)]; and

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<sup>4</sup> Key procedural decisions are addressed further from paragraph 1.4.47 below.

- Agence Francaise pour la Biodiversité, Direction Appui aux politiques publiques, Departement Milieux marins [[REP1-094](#)].
- Port of Tilbury London Limited (PoTLL), a Port operator in the Thames estuary wrote to the ExA on 3 December 2018 (after the deadline for the submission of RRs) and requested to become involved in the Examination [[AS-005](#)]. It attended the PM where the ExA decided that PoTLL could be an OP. At the PM and at all subsequent stages of the Examination, PoTLL was represented jointly with London Gateway Port Ltd (LGPL) another Thames estuary Port operator and an IP [[RR-013](#)] and treated equivalently to an IP on that basis.
- Kent and Essex Inshore Fisheries and Conservation Authority (KEIFCA) wrote to the ExA on 10 December 2018 (after the deadline for the submission of RRs) and requested to become involved in the Examination [[AS-028](#)]. The ExA decided at the PM that KEIFCA could participate in the Examination as an OP. KEIFCA made a written representation on that basis.
- BritNed Development Ltd (BritNed), a company promoting a high voltage direct current (HVDC) interconnector cable over a 260km maritime route between the Isle of Grain in the UK and Maasvlakte in the Netherlands wrote to the ExA on 11 March 2019, drawing attention to the relationship between its project and the Proposed Development [[AS-012](#)]. On 15 March 2019, the ExA made a procedural decision [[PD-011](#)] that BritNed could participate in the remainder of the Examination as an OP. BritNed was thereafter treated in all respects equivalently to an IP.
- Southern Water (SW) [[AS-015](#)] wrote to the ExA on 3 May 2019, identifying that it had not until that time registered as an IP. It was joined to the Examination as a Statutory Party from that point forwards.
- Mr Steve Willey as agent for A Skip 4 You of Richborough (SWE) [[AS-016](#)] wrote to the ExA on 1 May 2019, requesting to register as an IP. He was joined to the Examination from that point forwards as an OP and treated in all respects equivalently to an IP.
- The National Federation of Fishermen's Organisations (NFFO) [[AS-017](#)] wrote to the ExA on 28 May 2019 drawing attention to its response to the MMO in respect of matters raised in the ExA's ExQ3.1.5. On 30 May 2019, the ExA made a procedural decision [[PD-021](#)] that the NFFO could participate in the remainder of the Examination as an OP. NFFO was thereafter treated in all respects equivalently to an IP.

1.4.47. During the Examination, as a consequence of discussions between relevant IPs and the Applicant, the following persons wrote to the ExA to inform it that their issues were settled, and their representations were withdrawn:

- Shakespeare Martineau as agent for National Grid plc (NG) (comprising National Grid Electricity Transmission (NGET) and National Grid Gas (NGG)) wrote to the ExA on 23 May 2019 [[AS-018](#)] indicating its client's agreement to the content of protective provisions in the dDCO and withdrawal of its RR [[RR-027](#)].
- CMS Cameron McKenna Nabarro Olswang as agent for Nemo Link Ltd (NLL) (operator of an electricity transmission interconnector between

Richborough Energy Park and Zeebrugge, Belgium, a joint venture between NG and Belgian Elia) wrote to the ExA on 5 June 2019 [[AS-019](#)] indicating its client's withdrawal of its RR [[RR-010](#)].

- SW wrote to the ExA on 6 June 2019 [[AS-020](#)] indicating its agreement to the content of protective provisions in the dDCO and withdrawal of its letter of objection and request to register as an IP of 3 May 2019 [[AS-015](#)].
- UK Power Networks (UKPN) for South Eastern Power Networks (SPN) wrote to the ExA on 24 May 2019 [[AS-021](#)] indicating its withdrawal of its RR [[RR-012](#)].

## Key Procedural Decisions

- 1.4.48. Most of the procedural decisions made at the outset of the Examination and set out in the Rule 8 Letter [[PD-008](#)] related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. Those decisions can be obtained from the Rule 8 Letter and so they are not reiterated here.

### Early Hearings on International and Maritime Matters

- 1.4.49. However, mention should be made of preliminary decisions proposed in the Rule 6 Letter [[PD-006](#)], discussed at the PM and confirmed in the Rule 8 Letter to provide notice of and hold two hearings at the outset of the Examination to address matters of apparent significant disagreement between the Applicant and certain IPs and/or OPs:

- **Issue Specific Hearing (ISH)1 on International Issues** was proposed to be held on 11 December 2018 [[PD-006](#)](Annex G) directly after the closure of the PM. In circumstances where the French Government had requested to participate in the Examination [[OD-002](#)] [[OD-009](#)] (see paragraph 1.4.46) and had raised the possibility of a range of effects including on Natura 2000 sites in its territory, the ExA wished to explore the approach taken by the Applicant to the assessment of such sites at the outset of the Examination, at a time that would be efficient for persons attending from overseas should any French Government representation attend the PM.
- **ISH2 on Maritime, Shipping, Navigation and Safety Issues** was proposed to be held on the day following the PM, 12 December 2018 [[PD-006](#)](Annex H). The ExA's reasoning for this decision noted that a substantial body of RRs from statutory/ regulatory bodies, port authorities, port undertakers, shipping and pilotage interests [[RR-002](#)] [[RR-003](#)] [[RR-009](#)] [[RR-011](#)] [[RR-013](#)] [[RR-022](#)] [[RR-039](#)] [[RR-044](#)] [[RR-050](#)] [[RR-051](#)] [[RR-054](#)] had raised concerns about the effects of the Proposed Development on navigational safety, shipping and ports interests. The ExA considered that it was important to commence its Examination of these issues at the outset of the Examination, to ensure that if additional mitigation or design changes to the Proposed Development were to emerge in response to them, there would be adequate time to enable these to be documented and examined in the six-month statutory period.



- 1.4.50. These decisions were supported by the Applicant and all engaged IPs and OPs at the PM and the early hearings proceeded for the purposes and in the manner set out in the Rule 6 Letter.

### **Management of Maritime, Shipping, Navigation and Safety Issues**

- 1.4.51. In addition to decisions in the Rule 6 and Rule 8 Letters, important procedural decisions were made during the Examination period, to provide for the Examination of contended maritime, shipping, navigation and safety issues that had provided the basis for the ExA's decision to hold ISH2 at an early point in the Examination and of a material change to the application proposed by the Applicant to address these issues (submitted later in the Examination). In relation to the management of the material change proposal, the ExA was guided by the approach in the Planning Inspectorate Advice Note 16 ([AN16](#)). It's procedural decisions about this (made on 1 March 2019 [[PD-010](#)] and 4 April 2018 [[PD-013](#)]) are summarised below.

- **ISH2 Actions: requests for additional mitigation or design changes**

Having heard these issues at ISH2 [[EV-007](#)], the ExA requested the IPs and OPs present at that hearing to identify if additional mitigation or design changes to the Proposed Development were required and, if so, to bring these forward to enable them to be presented at a relevant hearing in February 2019. There was general agreement to this approach. There was also general agreement between the Applicant, IPs and OPs present at the hearing to the ExA's request that they should work collaboratively and use the Statement of Common Ground (SoCG) process to develop shared positions and specify any changes that might be agreed in time for hearings in February 2019.

- **Applicant's initial response at ISH5**

At ISH5 into Maritime, Shipping and Navigation Safety on 20 February [[EV-031](#)] [[EV-032](#)] [[EV-033](#)] [[EV-034](#)], a substantial body of regulatory and industry IPs and OPs continued to advocate strongly for design-based changes, the Applicant initially maintained in oral submissions that these were not necessary. It became apparent that little of the collaborative working proposed at ISH2 had taken place in the time between December 2018 and February 2019.

- **Applicant's developed response at ISH5**

Within ISH5, having heard submissions from IPs and OPs and questions from the ExA, the Applicant agreed to engage with relevant regulatory and industry IPs and OPs and to hold a navigation safety technical workshop (ISH5 Action 7) [[EV-021](#)] as soon as possible after the hearing to identify possible solutions to outstanding technical disputes in relation to navigation risk assessment. It was agreed that a statement or statements were to be prepared to identify common and uncommon ground on disputed matters (SoCGs) and that unagreed matters that would require testing and adjudication by the ExA would also be identified by Examination Deadline (D)3 (5 March 2019), in turn enabling the Applicant, relevant IPs and OPs to prepare their own evidence on contended matters for hearings in April 2019.

Any solutions leading to requests for material changes to the Proposed Development were to be documented by D4 (28 March 2019) (ISH5 Action 5) [[EV-021](#)].

▪ **Action by the ExA: preparing for Examination of a possible material change**

Following ISH5 and in the light of oral submissions made there, the ExA made a procedural decision on 1 March 2019 [[PD-010](#)], to vary the Examination Timetable:

- to provide an additional two and a half days of hearing time in April 2019 for maritime, shipping, navigation and safety issues (ISH8 on 16 and 17 April 2019)(the April hearings);
- to foreshadow and provide for the possibility that where there was substantial ongoing technical disagreement between experts on matters relevant to navigational safety, limited cross questioning to ensure the adequate testing of material in dispute could be permitted by the ExA at ISH8 pursuant to EPR Rule 14(5);
- to provide for the submission of a '[s]tatement of direction from the Applicant indicating that either changes to the application will be submitted at Deadline 4 or alternatively confirming that no such changes will be submitted' and requests to be heard at April hearings at D3 (5 March 2019);
- to request that a Report from any navigation technical workshop and a '[r]equest for change(s) and documented change(s) to the application (if any) from the Applicant' should be provided at D4 (28 March 2019).
- D4A (9 April 2019) was added to the timetable to provide confirmation by the Applicant, relevant IPs and OPs of any matters still in contention and the exchange of contended evidence for Examination at the April hearings.

In its procedural reasoning for these decisions, the ExA noted '*[t]he timing and procedure [...] has been adopted to support key strategic decisions by the Applicant about whether it wishes to pursue relevant agreements with the ISH5 IPs or not in a context where:*

- 'key decisions should be taken in principle by Deadline 3 (D3); and
- 'key decisions should be given effect to in detailed terms by Deadline 4 (D4).

*'The ExA considers that if these decisions are not taken within this timescale, whatever approach is adopted will not have sufficient time to be fully examined before the statutory deadline before the closure of the Examination on 11 June 2019.'*

▪ The Applicant failed to comply with the timing from the procedural decision of 1 March 2019 [[PD-010](#)] in the following respects and without clear reasons:

- a request to make a material change to the application to provide navigation risk mitigation in the form of a Structures Exclusion Zone (SEZ) in the offshore array area was submitted at D4 (28 March 2019); but

- a Navigation Risk Assessment Addendum (NRA Addendum) and an addendum to the Environmental Statement (ES) that had been foreshadowed as necessary to support this change were not submitted and according to the Applicant, would not be submitted until D4A (9 April 2019), which was the date on which IPs and OPs were required to have identified matters in contention and submitted statements of evidence for the April hearings.
- **Further Action by the ExA: providing for the proper engagement of IPs and OPs in the Examination of an intended material change**
- In circumstances where the Applicant’s non-compliance with the procedural decision of 1 March 2019 led to circumstances in which, without further action by the ExA, hearings would proceed in April at which the ExA itself, IPs and OPs would not be aware of the full case for the proposed SEZ, the ExA considered that action was required to secure submission of as much of the supporting documentation as possible, as soon as possible. The ExA made a further procedural decision on 4 April 2018 [[PD-013](#)] in which it observed: *‘[t]he decision by the Applicant not to submit a revised Navigation Risk Assessment (NRA) and an Environmental Statement (ES) Addendum responding to its Structures Exclusion Zone (SEZ) proposal [REP4-018] and updated Offshore Works Plan [REP4-028] at Deadline 4 and its proposal not to submit them until Deadline 4A have the following effects:*
- ‘The relevant interested parties (IPs)<sup>5</sup> cannot judge the question of whether matters remain in contention, or make decisions about, form and submit the evidence that they may need to rely upon in ISH8 at Deadline 4A if they are unable to see the evidence on which the Applicant relies to support its SEZ proposal until what was Deadline 4A (9 April 2019).
  - ‘The ExA cannot judge the question of whether the SEZ proposal amounts to a material change and prospective consultees on a material change proposal cannot be expected to respond to it until it has been completely documented, which at present the Applicant has indicated will not occur until what was Deadline 4A [[PD-013](#)].’
- In response to these concerns, the ExA the procedural decision on 4 April 2018 provided in summary for:
- a new D4B (5 April 2019) for receipt of the Applicant’s Navigation Risk Assessment Addendum (NRA Addendum), addendum to the Environmental Statement (ES) and other supporting documentation;

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<sup>5</sup> The ‘relevant IPs’ referred to were: the participants in ISH2 on 12 December 2019 and in ISH5 and 6 on 20 February 2019 with interests in Maritime, Shipping, Navigation and Safety considerations at sea. They include both Interested Parties and OPs invited to participate in the Examination by the ExA. They are listed in Annex B to the ExA’s procedural decision of 4 April 2019 [[PD-013](#)].

- a new D4C (10 April 2019), by which statements of evidence on contended matters for hearing would be submitted, enabling participants in the April hearings to be aware of the cases for and against their respective positions.
- 1.4.52. The ExA's further procedural decision of 4 April 2018 [PD-013] was fully complied with by the Applicant, all IPs and OPs. This enabled ISH8 into Environmental, Shipping, Maritime, Fishing and Other Matters to be delivered on 16 and 17 April 2019 with adequate preparation and full participation. It should be recorded that there were substantial matters of outstanding professional and technical disagreement on navigational safety at ISH8 and so, pursuant to EPR Rule 15(5) and as foreshadowed in its procedural decisions, the ExA did decide to permit limited cross questioning to ensure the adequate testing of representations.
- 1.4.53. In reflecting on these arrangements, the ExA acknowledges that the timings of new D4B and D4C provided for in the further procedural decision of 4 April 2019 [PD-013] were limited in extent. The ExA provided for these in the interests of providing natural justice and procedural fairness to all participants in the Examination, ensuring that:
- the initial deadline on the Applicant for the disclosure of documents supporting its material change request not having been met, at least such documents as had been prepared would be made available. The ExA viewed this approach to be distinctly preferable to an alternative in which parties were expected to participate in the April hearings without advance sight of the Applicant's position;
  - the ExA itself, IPs and OPs would be able to see a fully documented material change proposal before being required to form judgments upon it; and thereby
  - would be able to prepare for and participate in the April hearings and particularly in relation to contested issues around navigation safety mitigation.
- 1.4.54. The ExA did consider delaying the April hearings as an alternative option. However, it decided not to do so, on the basis that NSIP Examinations are statutorily required to complete within a 6-month period (PA2008 s98 (1)) and practice to date indicates that no SoS has ever been willing to extend this period. It was not practicable to provide notice for or to deliver the subject matters of the April hearings at later dates within the Examination period (which by that time was within 9 weeks of its end), as there would then be a high risk that relevant post-hearing actions, submissions and comments would not be completed before the deadline. It appeared preferable to maintain the April hearings (albeit with possible limitations on the extent of participation by some IPs and OPs) but to further amend the Examination Timetable ([PD-013] Annex A) to provide for additional written questions by the ExA and a full further round of Written Representations (WRs) and statements of evidence on relevant matters in the weeks from ISH8 to the statutory deadline on 11 June 2019.
- 1.4.55. In conducting the Examination on this basis, the ExA has paid ongoing regard to the need to ensure procedural fairness to all participants and is

satisfied that the combination of its procedural decisions and timetable changes have achieved that end.

- 1.4.56. A complete record of hearing processes in the Examination can be found from paragraph 1.4.13 supported by Appendix A below and provide context to these procedural decisions.

## **1.5. ENVIRONMENTAL IMPACT ASSESSMENT**

- 1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.5.2. On 4 January 2017, the Applicant submitted a Scoping Report to the Secretary of State (SoS) under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the 2009 EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). It follows that the Applicant is deemed to have notified the Secretary of State under Regulation 6(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the Project.
- 1.5.3. On 14 February 2017 the Planning Inspectorate provided a Scoping Opinion [[APP-130](#)]. In accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, for which an ES must be prepared.
- 1.5.4. The application was accompanied by an ES submitted on 27 June 2018. The ES can be found in the Examination Library under references from [[APP-036](#)] in sequence to [[APP-129](#)].
- 1.5.5. It should be noted that whilst scoping took place under the 2009 EIA Regulations, the ES was prepared pursuant to Regulation 3 and more broadly in compliance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations). On that basis, the ES is not subject to the transitional provisions in the 2017 EIA Regulations.
- 1.5.6. On 19 September 2018 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 17 of the EIA Regulations had been complied with [[PD-005](#)].
- 1.5.7. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4 of this Report.

## **1.6. HABITATS REGULATIONS ASSESSMENT AND RELATED PROCESSES**

- 1.6.1. The Proposed Development has implications for Natura 2000 network sites (European Sites) within the UK and external to the UK. A Report to Inform Appropriate Assessment (RIAA) has been provided [[APP-031](#)][[APP-032](#)][[APP-033](#)].

- 1.6.2. Consideration is given to the adequacy of the RIAA, associated information and evidence and the matters arising from it in Chapters 4 to 8 of this Report.
- 1.6.3. Consideration is given to matters arising within the UK under the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (the Habitats Regulations) in Chapter 7. Consideration is given to matters arising in respect of European Sites external to the UK in Chapter 8. In that chapter, it should be noted that whilst the Habitats Regulations as domestic UK regulations do not apply to sites outside the jurisdiction of the UK, DECC '*Guidelines on the assessment of transboundary impacts of energy developments on Natura 2000 sites outside the UK*' (March 2015)<sup>6</sup> are applicable and provide that the SoS applies the principles of the Habitats Directive where there are significant effects on Natura 2000 sites in other EEA states.

## **1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

- 1.7.1. By the end of the Examination, some IPs had entered into private commercial agreements with the Applicant that in turn procured the withdrawal of their representations. Paragraphs from 1.4.47 record those bodies who withdrew from the Examination on this basis. However, none of the agreements were disclosed to the ExA, on the basis that relevant agreements that required security (for example through protective provisions) had already been given effect to in the dDCO prior to the point of withdrawal.
- 1.7.2. The Applicant did not prepare and nor at any time did any Local Planning Authority (LPA) or other relevant body prepare or suggest that any planning obligation or agreement (for example) under s106 of the Town and Country Planning Act 1990 as amended was necessary to make the Proposed Development acceptable in policy terms.
- 1.7.3. It follows that there are no undertakings, obligations or agreements that are important and relevant considerations for the SoS. All such matters are addressed within the dDCO and are dealt with as necessary in Chapter 11.

## **1.8. OTHER CONSENTS**

- 1.8.1. The application documentation [[APP-035](#)] and questions during this Examination have identified the following consents that the Proposed Development has obtained or may need to obtain, in addition to Development Consent under PA2008. The position on these at the end of the Examination is recorded below.

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<sup>6</sup> [Guidelines on the assessment of transboundary impacts of energy developments on Natura 2000 sites outside the UK](#), DECC, March 2015 at pg 5.

#### Consents offshore

- Agreement for Lease (AfL) from the Crown Estate (tCE). Normally, an applicant for an OWF has an AfL from tCE prior to the preparation and submission of an application under PA2008. In this case, as documented further below in paragraph 2.4.2 – 3, the Applicant does not benefit from an AfL and so cannot warrant that it is able to take possession of the sea area required to construct and operate the development. This outstanding matter requires to be resolved before the SoS decision on the DCO.
- Coast Station Radio Licence from the Radiocommunications Agency under the Wireless Telegraphy Act 2006 (outstanding).
- Energy Generation Licence from the Office of Gas and Electricity Markets (OfGEM) under the Electricity Act 1989 (already granted).
- European Protected Species (EPS) Licence from the MMO under the Conservation of Offshore Marine Habitats and Species Regulations 2017 (outstanding and to be applied for if and when required in construction).
- F10 – Notification of Construction Project to the Health and Safety Executive under the Construction (Design and Management) Regulations 2015 (outstanding and to be provided when required in construction).
- Safety Zones application to the SoS under the Energy Act 2004 (outstanding and to be applied for when required in construction).
- Decommissioning Scheme from the SoS under the Energy Act 2004 (outstanding but not required until after the operational phase of the Proposed Development).

#### Consents onshore

- Building Regulation approval from the relevant local authority under the Building Regulations 2010 (outstanding and to be applied for when required in construction).
- Crown Consent from the Crown Estate (tCE) and the Ministry of Justice (MoJ) under s135 PA2008 (addressed in Chapter 10 of this Report).
- Inalienable Land Consent from the National Trust (addressed in Chapter 10 of this Report).
- EPS Licence from NE under the Conservation of Habitats and Species Regulations 2017 (outstanding and to be applied for if and when required in construction).
- Badger Licence from NE under s10 of the Protection of Badgers Act 1992 (if badgers are located during pre-construction surveys).
- Environmental Permits (EPs) under the Environmental Permitting (England and Wales) Regulations 2016 from the Environment Agency (EA) in respect of:
  - flood defence or flood risk activity works (outstanding and to be applied for if and when required in construction). (Other consents under land drainage byelaws may also apply);
  - water discharge or waste operations / registration of exempt waste operations and water discharges (outstanding and to be applied for if and when required in construction).

- Water Abstraction Licence under the Water Resources Act 1991 from the EA (outstanding and to be applied for if and when required in construction).
- Notice of Street Works to KCC under the Traffic Management Act 2004 ('booking' time on affected highways prior to authorised works affecting the highway).
- Abnormal loads permit from the relevant highway authority (HA, KCC, street authority etc) under the Road Vehicles (Authorisation of Special Types) (General) Order 2003 and the Road Traffic Act 1988 (outstanding and to be applied for if and when required in construction).
- Temporary Traffic Regulation Order (TRO) from KCC under the Road Traffic Regulation Act 1984 (outstanding and to be applied for if and when required in construction).

1.8.2. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that, with two exceptions, there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant the application. The exceptions are as follows:

- Land held inalienably by the National Trust, where it must either be clear that the National Trust objection is withdrawn, or SPP will apply; and
- Crown Consent under s135 PA2008, which is required to be granted unconditionally before an Order can be made.

These are both addressed in Chapter 10.

## 1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this Report is as follows:

- **Chapter 1** introduces the reader to the application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the framework of planning issues that arose from the application and during the Examination.
- **Chapter 5** sets out responses on individual planning issues.
- **Chapter 6** sets out responses on composite, secondary and contingent planning issues which rely on findings made in Chapter 5.
- **Chapter 7** considers effects on European Sites within the UK to inform Habitats Regulations Assessment (HRA).
- **Chapter 8** considers effects on European Sites outside the UK.
- **Chapter 9** sets out the balance of planning considerations arising from Chapters 4 to 8, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 10** sets out the ExA's Examination of Compulsory Acquisition (CA) and Temporary Possession (TP) proposals.



- **Chapter 11** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 12** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.9.2. This Report is supported by the following Appendices:

- **Appendix A** – the Examination Events.
- **Appendix B** – the Examination Library.
- **Appendix C** – the List of Abbreviations.
- **Appendix D** – the DCO.

## 2. THE PROPOSAL AND THE SITE

### 2.1. THE APPLICATION AS MADE

- 2.1.1. The Applicant submitted an application under s37 of the Planning Act 2008 (as amended) (PA2008) for an order granting development consent for what was described as the construction and operation of an extension to the existing Thanet Offshore Wind Farm off the coast of Thanet, Kent [[APP-003](#)].

#### **The Proposed Development**

- 2.1.2. A full description of the Proposed Development is set out in Chapter 6.2.1 of the Environmental Statement (ES) [[APP-042](#)] for the offshore works and Chapter 6.3.1 of the ES [[APP-057](#)] for the onshore works. A 'design envelope' approach has been adopted, to allow sufficient flexibility in the project description to accommodate refinement of the detailed design in the post-consent phase. Following the 'Rochdale Envelope' approach described in the Planning Inspectorate's Advice Note 9 (AN9), the ES has identified a series of maximum design parameters in order to assess a realistic worst-case scenario of effects arising from the Proposed Development.

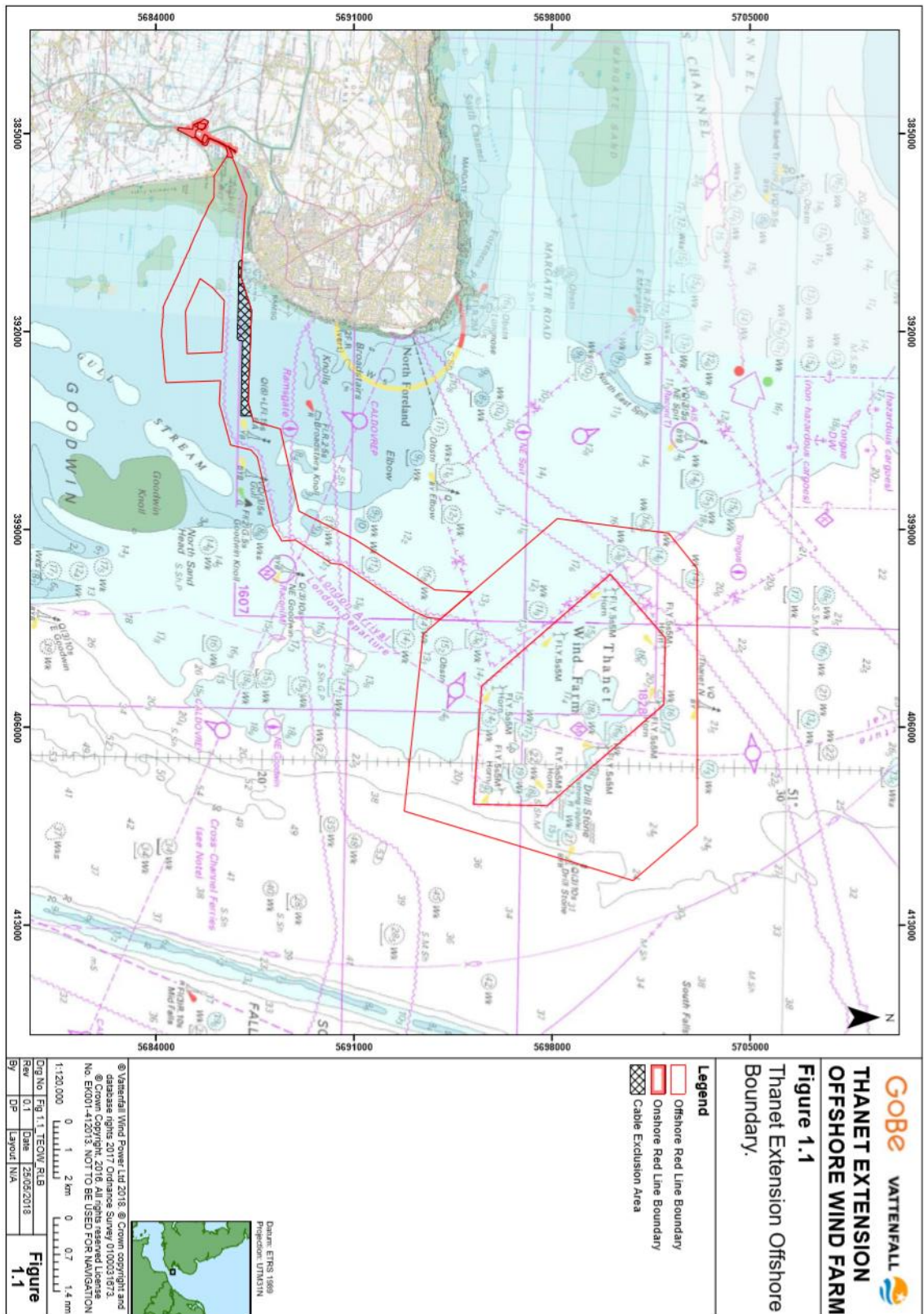
- 2.1.3. In summary, the principal works applied for comprise [[APP-042](#)] [[APP-022](#)] [[APP-023](#)]:

- a maximum of 34 wind turbine generators (WTGs), each with a rated capacity of between 8 and 12 MW, providing a total maximum generating capacity of 340 megawatts (MWe);
- a maximum of one offshore substation;
- up to one meteorological mast, one LIDAR device and one wave buoy; and
- subsea inter-array cables linking the individual WTGs.

- 2.1.4. The application also includes associated development which in summary terms comprises [[APP-057](#)] [[APP-042](#)] [[APP-022](#)] [[APP-023](#)]:

- up to four subsea export cables linking the offshore array to the shore;
- scour protection around foundations and cables, if required;
- an offshore export cable landfall located in Pegwell Bay, with three possible design options as originally applied for;
- up to four Transition Joint Bays (TJBs) connecting the offshore cables to the onshore cables;
- up to four onshore export cable circuits covering a length of approximately 2.6 km;
- one onshore High Voltage Alternating Current (HVAC) substation at Richborough Port Container and Vehicle Park; and
- up to two interconnecting underground cable circuits connecting the onshore substation to the National Grid Electricity Transmission's (NGET) existing 400kV substation at Richborough Energy Park.

**Figure 2.1: Location of the Offshore Proposed Development Site<sup>7 8</sup>**



<sup>7</sup> Reproduced from Applicant’s documentation: do not scale. Refer to original.

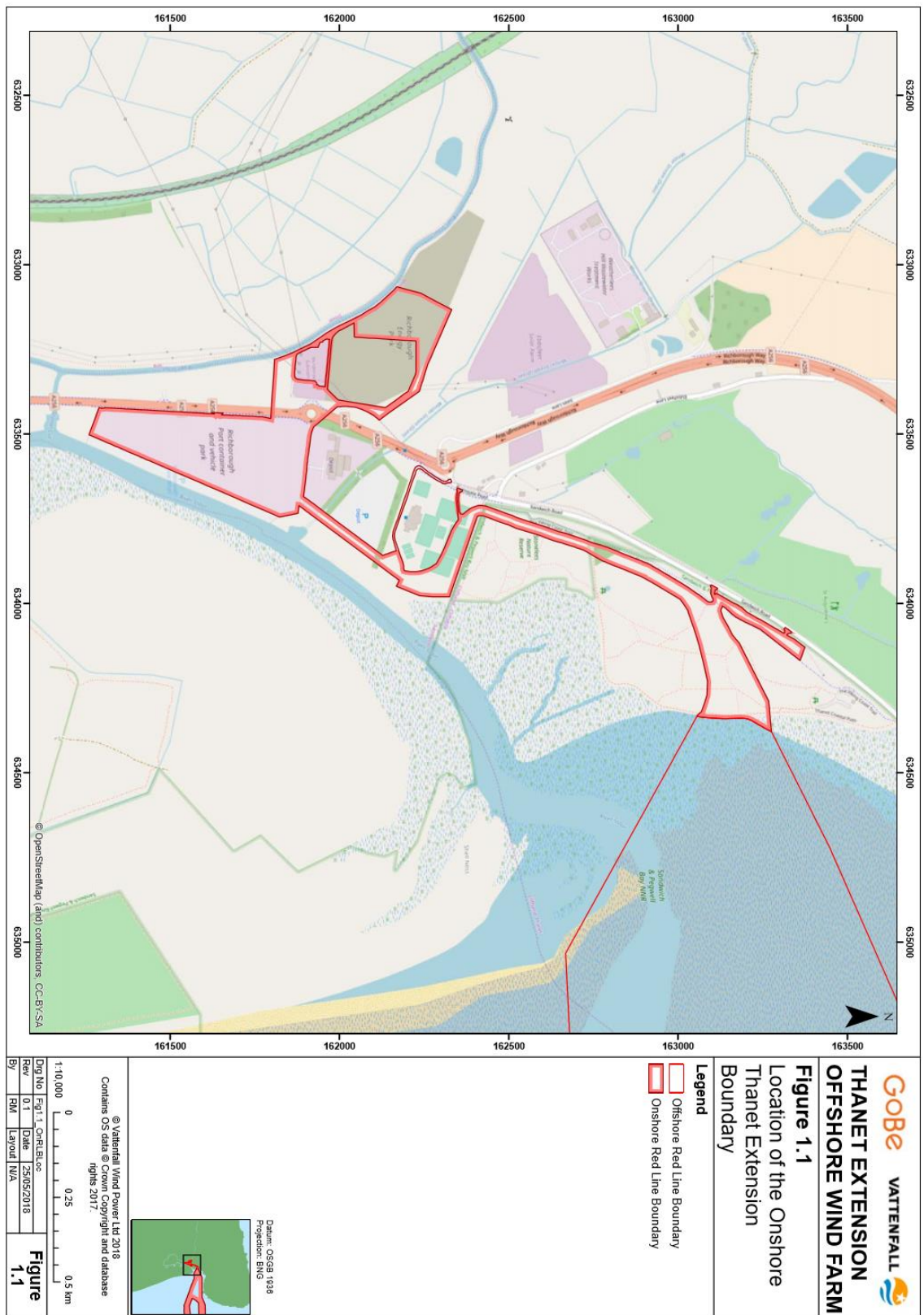
<sup>8</sup> Source: Taken from Figure 1.1 of Chapter 6.2.1 of the ES [APP-042]

- 2.1.5. The submitted dDCO [[APP-022](#)] also includes ancillary works within the order limits as defined in Part 2 of Schedule 1, namely:
- temporary landing places, moorings or other means of accommodating vessels in the construction and maintenance of the authorised development;
  - marking buoys, beacons, fenders and other navigational warning or ship impact protection works;
  - temporary works for the benefit or protection of land or structures affected by the authorised development; and
  - such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which are within the scope of the environmental impact assessment recorded in the environmental statement.

### **The Application Site**

- 2.1.6. The offshore wind farm site is located in the southern North Sea off the north-east coast of Kent. The offshore array area would be approximately 8 km from the shore at the nearest point and would encircle the outer boundary of the existing operational Thanet Offshore Wind Farm (TOWF) (see Figure 2.1 above). The array area would occupy a total site area of 70 km<sup>2</sup> [[APP-042](#)]. Water depths within the proposed array area range typically between 11.5 and 45 metres relative to the lowest astronomical tide (LAT), with depths generally increasing in a north-easterly direction [[APP-043](#)].
- 2.1.7. The export cable route would run in a south-westerly direction approximately 20 km to the landfall point at Pegwell Bay [[APP-134](#)]. The submitted Land Plan (offshore) [[APP-008](#)] and Works Plan (offshore) [[APP-011](#)] present the proposed offshore development as applied for.
- 2.1.8. A Cable Exclusion Area (CEA) (hatched black in Figure 2.1) is identified for part of the export cable corridor within which no infrastructure would be installed but where construction and maintenance anchoring would be permitted. The Applicant's rationale for the CEA relates to reducing potential interactions with Ramsgate Harbour approaches and with designated conservation sites [[APP-042](#)].
- 2.1.9. The onshore application site is shown in Figure 2.2: Location of the Onshore Proposed Development Site and includes the export cable landfall area in Pegwell Bay Country Park. From there, the site comprises land for the onshore cable alignment moving in a southerly direction through Stonelees Nature Reserve to a location opposite Ebbsfleet cottages, the only nearby residential properties.
- 2.1.10. At this point the cable alignment makes a ninety degree turn to run along the perimeter of and reduce impact on land occupied by the Baypoint Club (a sports club), before making a further ninety degree turn to

**Figure 2.2: Location of the Onshore Proposed Development Site<sup>9 10</sup>**



<sup>9</sup> Reproduced from Applicant’s documentation: do not scale. Refer to original.  
<sup>10</sup> Source: Taken from Figure 1.1 of Chapter 6.3.1 of the ES [APP-057]

track to the west of the River Stour, running along the perimeter of and reducing impact on the business premises of British Car Auctions (BCA). The cable alignment then reaches the proposed onshore substation site at Richborough Port Container and Vehicle Park. There, land currently leased to UK Border Force as a secure compound is proposed to form the substation site, but additional land within the Richborough Port Container and Vehicle Park is also proposed to be taken to enable the construction of and transfer to UK Border Force of a replacement secure compound.

- 2.1.11. From the port land, the cable alignment and application site cross the A256 road, allowing for the onward passage of the cable to Richborough Energy Park where it would connect to the National Grid transmission system at an existing substation. Richborough Energy Park is in use and proposed for further energy-related development including generation, distribution, transmission and interconnection undertakings and the cable alignment includes optionality to accommodate this use and development.
- 2.1.12. The onshore site encompasses land within the administrative boundaries of both Thanet District Council and Dover District Council.
- 2.1.13. The submitted Land Plan (onshore) [[APP-009](#)] and Works Plan (onshore) [[APP-012](#)] present the proposed onshore development as applied for.

### **Site Surroundings**

- 2.1.14. The immediate landward surrounds of the application site are provided (from the north) by those parts of Pegwell Bay Country Park that are not in the application site, by Stonelees Golf Course west of Sandwich Road, by biomass and solar generating facilities, a wastewater treatment plant, Richborough Energy Park and industrial land west of the A256. Land south of the application site and east of the A256 is in use as a waste transfer site. Much of the eastern surrounds are formed by the River Stour, with Port of Richborough quayside and saltmarsh foreshore.
- 2.1.15. The village of Cliffsend and the former Ramsgate Hoverport lie some 500m north west of the proposed cable landfall location in Pegwell Bay Country Park. The closest residential properties to the application site are found in the hamlet of Ebbsfleet, directly adjacent to the proposed cable alignment. The application site includes land within, and close to, a number of internationally, nationally and locally designated sites of biodiversity value. The Applicant identifies the following statutorily designated sites as being potentially affected by the Proposed Development [[APP-016](#)] [[APP-061](#)]:
- Thanet Coast SAC;
  - Sandwich Bay SAC;
  - Southern North Sea (SNS) SAC;
  - Margate and Long Sands Site of Community Importance (SCI);
  - Thanet Coast and Sandwich Bay SPA;
  - Outer Thames Estuary SPA;
  - Stodmarsh SPA;
  - Stodmarsh Ramsar;

- Thanet Coast and Sandwich Bay Ramsar;
- Thanet Coast MCZ;
- Goodwin Sands MCZ;
- Sandwich Bay to Hacklinge Marshes SSSI;
- Thanet Coast SSSI;
- Sandwich and Pegwell Bay NNR; and
- Prince’s Beachlands Local Nature Reserve (LNR)

Further consideration of the potential effects of the Proposed Development in this regard is contained in Chapters 5.3 and 7 of this Report.

- 2.1.16. In light of its proximity to the Thanet coastline, the offshore array area would be visible from a number of onshore viewpoints beyond the order limits for the project. A full exploration of the potential landscape and visual, and historic environment effects is set out at Chapters 5.4 and 5.5 of this Report.

## 2.2. THE APPLICATION AS EXAMINED

- 2.2.1. During the Examination, a number of documents were submitted by the Applicant to supplement, clarify or amend details contained in the application, often in response to matters raised by the parties or the ExA. Insofar as this supplementary material relates to the ExA’s assessment of the main issues in this case, it is documented in the relevant Chapter of this Report.

- 2.2.2. Two principal changes to the application were requested by the Applicant during Examination. They can be summarised as:

- the removal of Cable Landfall Option 2<sup>11</sup>; and
- the introduction of a Structures Exclusion Zone (SEZ) within the offshore Order limits<sup>12</sup>.

In addition to this, minor amendments to the Order Limits were introduced.

### Removal of Cable Landfall Option 2

- 2.2.3. The draft DCO as applied for included three design options for the installation of export cables and Transition Joint Bays (TJBs) at the landfall location at Pegwell Bay Country Park. The options are described in paragraphs 1.3.3 and 1.5.6 – 1.5.9 of [APP-057] and broadly comprise:

- **Landfall Option 1:** Use of Horizontal Directional Drilling (HDD) from the Pegwell Bay Country Park to the intertidal mudflats, with TJBs located below ground within the Country Park;

<sup>11</sup> Documented in [REP1-001]; [REP1-014]; [REP2-001]; [REP2-011]; [REP2-028]; [REP2-026]; [REP2-029]; [REP2-036]; and [REP2-037].

<sup>12</sup> Documented in [REP4-001]; [REP4-018]; [REP4-023]; [REP4-027]; [REP4B-001]; [REP4B-002]; [REP4B-009]; [REP4B-010]; [REP4B-011]; [REP4B-012]; [REP4B-013]; [REP4B-014]; [REP4B-015]; [REP4B-016]; [REP4B-021]; and [REP5-039].

- **Landfall Option 2:** A seaward extension of the existing sea wall to allow the export cables to interface from burial within the intertidal mudflat and saltmarsh to a surface laid berm containing above-ground TJBs within the Pegwell Bay Country Park; and
- **Landfall Option 3:** Open trenching through the existing sea wall and Pegwell Bay Country Park, with TJBs located below ground within the Country Park.

2.2.4. Concerns over the proposed Landfall Option 2 were raised by a number of IPs as part of their RRs, including those from:

- KCC [[RR-038](#)];
- Kent Wildlife Trust (KWT) [[RR-048](#)];
- NE [[RR-053](#)];
- Environment Agency (EA) [[RR-043](#)]; and
- Royal Society for the Protection of Birds (RSPB) [[RR-057](#)].

2.2.5. The ExA asked questions (ExQ1.1.37-1.1.40) about the matters raised and in particular about the justification for the permanent loss of intertidal saltmarsh habitat that would result from Landfall Option 2 [[PD-012](#)]. At D1 (15 January 2019), and in response to the RRs and ExQs, the Applicant sought to remove Landfall Option 2 from the description of the Proposed Development [[REP1-001](#); [REP1-014](#)]. The Applicant made the case that this should be considered as a non-material change to the description of the Proposed Development:

*'As all landfall installation options were considered as part of the worst-case scenario throughout the Environmental Statement, any effects following the removal of option 2 would at the very worst be the same as that assessed, and in many cases reduced. No additional land is required due to this decision and therefore, the Applicant does not consider that this is a material change to the application.'* [[REP1-001](#)]

2.2.6. This position was confirmed by the Applicant at D2 (5 February 2019) [[REP2-001](#)], with a consequential review of the ES [[REP2-036](#)] and revised documents relating to the land rights being sought [[REP2-028](#), [REP2-026](#), [REP2-029](#), [REP2-011](#), [REP2-037](#)] provided at that deadline.

2.2.7. The proposed removal of Landfall Option 2 was discussed at ISH3 (19 February 2019) [[EV-026](#)]. Having considered all relevant written material, heard parties and deliberated on the proposed change, the ExA accepted the revision as a non-material change for Examination purposes. It noted that no submissions had been made to indicate any disagreement with the Applicant's position that the withdrawal of Landfall Option 2 should be treated as a non-material. It sought views orally from the parties present none raised any concern that the change was material. Parties were given the opportunity to raise any such concerns following the February hearings, but no representations were made to challenge the Applicant's position in this regard.

2.2.8. In reaching this position, the ExA noted that no new land would be affected and accepted the Applicant's evidence that the environmental effects of the project as a result of the change could be no greater than



those originally assessed [[REP2-036](#)]. The change was requested at a relatively early stage of the Examination, allowing IPs and OPs who did not participate in hearings to consider and make representations on any implications of the change without the need for any amendment to the Examination Timetable. No such submissions were received.

- 2.2.9. Therefore, having regard to all submissions on this matter and to Government Guidance<sup>13</sup>, the ExA agrees that the removal of Landfall Option 2 constituted a non-material change to the application. Accordingly, this Report has been prepared on the basis that Landfall Option 2 had been removed from the application.
- 2.2.10. Submissions from IPs generally welcomed the removal of Landfall Option 2. In the Project Description; Site Selection and Alternatives; and Saltmarsh SoCG between NE and the Applicant [Table 3, [REP5-075](#)], NE agreed that the removal of Landfall Option 2 had addressed its key concerns with regard to landfall designs. In a similar vein, KWT [Table 3, [REP3-038](#)] and the EA [Table 3, [REP3-036](#)] welcomed the change. KCC, who had submitted concerns about the effects of Landfall Option 2 on access to, use and landscape quality of Pegwell Bay Country Park [[RR-038](#)], welcomed the removal of Landfall Option 2 [[REP6-009](#)]. The SoCG with DDC [[REP3-086](#)] also records agreement with this change.

### **Introduction of a 'Structures Exclusion Zone' (SEZ)**

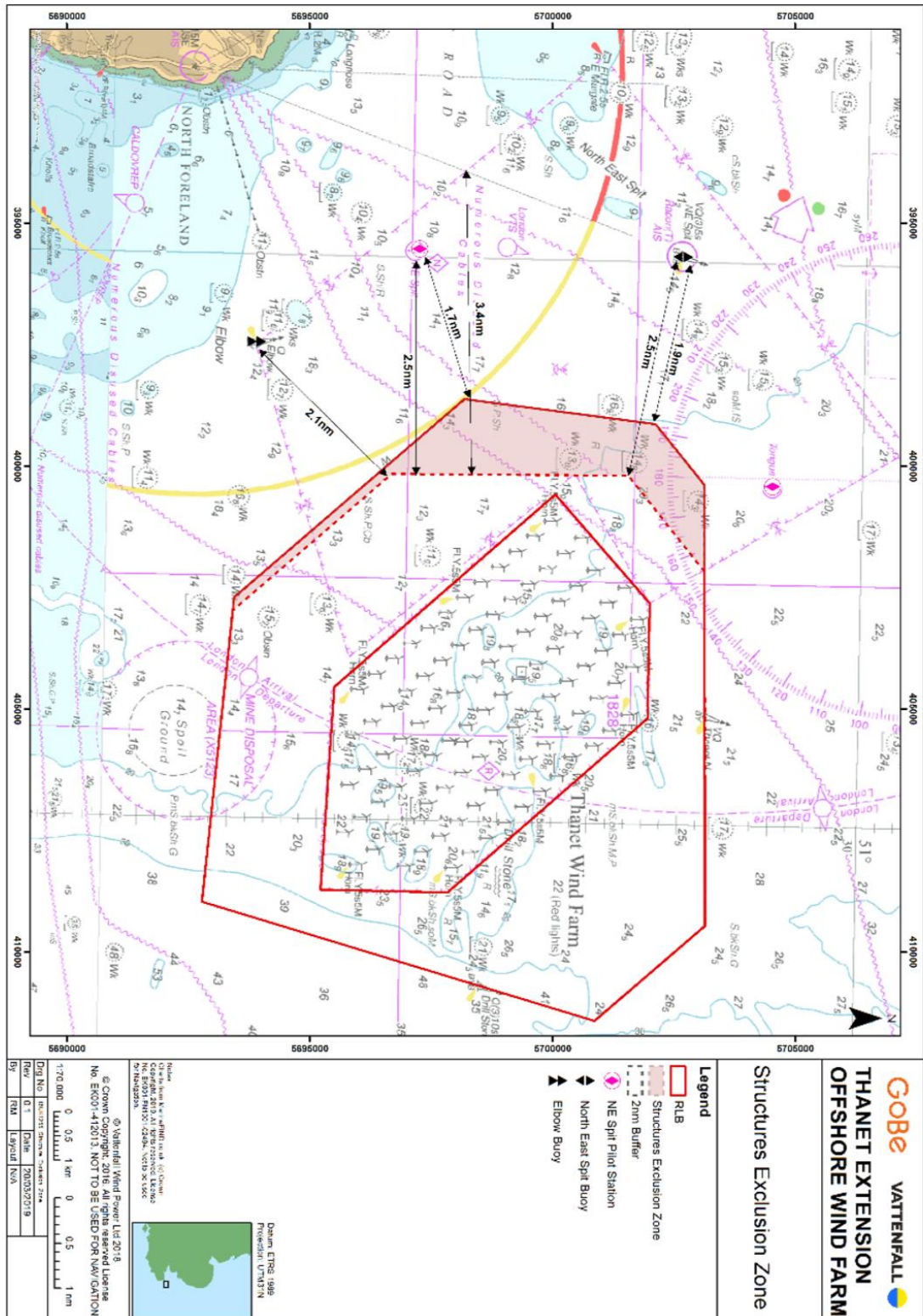
- 2.2.11. Following extensive concerns from maritime parties about the degree to which additional navigation risk resulting from the Proposed Development as applied for had not been demonstrated by the Applicant to be reduced to within the range As Low As Reasonably Practicable (ALARP); at D4 of the Examination (28 March 2019) the Applicant made a request for a material change to the application to provide additional navigation risk mitigation in the form of a Structures Exclusion Zone (SEZ) within the western part of the offshore array area [[REP4-001](#), [REP4-018](#)]. The proposed SEZ is shown in

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<sup>13</sup> [Planning Act 2008: Guidance for the examination of applications for development consent](#), DCLG (2015)

- 2.2.12. Figure 2.3: Plan Showing Proposed Structures Exclusion Zone . At this stage, the Applicant also submitted its initial review of the implications for the ES and RIAA from the introduction of the SEZ [[REP4-027](#)]. It is important to be clear at the outset that the SEZ did not lead to a change in the DCO boundary: all sea subject to the proposed SEZ is within the boundary of the offshore WTG area as originally applied for.
- 2.2.13. At D4B (5 April 2019), the Applicant's NRA Addendum [[REP4B-002](#)], ES addendum [[REP4B-010](#)] and other supporting documentation forming the material change request were submitted. The proposed SEZ was reflected in a revised dDCO [[REP4B-021](#)].
- 2.2.14. Within the proposed SEZ, none of the infrastructure constituting Work No. 1(a) to (c) (the WTGs, met mast, Lidar, wave buoy), Work No.2 (the

Figure 2.3: Plan Showing Proposed Structures Exclusion Zone<sup>14 15</sup>



<sup>14</sup> Reproduced from Applicant’s documentation: do not scale. Refer to original.  
<sup>15</sup> Taken from Figure 1 of the Applicant’s D4 Submission – Appendix 14 [REP4-018]

offshore substation) nor Ancillary Works (a), (c) and (d) may be installed, and no part of a WTG would be permitted to oversail it. The SEZ sought to address shipping and navigation concerns raised by IPs [[REP4-001](#)].

- 2.2.15. Section 1.4 of this Report sets out the procedural decisions and steps that were taken by the ExA to enable this change request to be dealt with within the limited time remaining in the Examination Timetable. The ExA formally accepted the Applicant's SEZ material change request on 9 April 2019 [[PD-014](#)] and its reasoning is set out at pages 2 and 3 of that letter. The Applicant undertook consultation on the proposed SEZ material change documents between 25 April and 26 May 2019 [[AS-014](#)] and submitted a Consultation Report at D6 (28 May 2019) [[REP6-044](#)].
- 2.2.16. In dealing with this material change request, the ExA was aware of the need to consider whether the change to the application documents would change the project to a point where it became a different application and whether the SoS would have power therefore under s114 of PA2008 to make a DCO having regard to the development consent applied for.
- 2.2.17. 'Planning Act 2008: Guidance for the Examination of applications for development consent' (March 2015), provides guidance at paragraphs 109 to 115 in relation to changing an application post Acceptance<sup>16</sup>. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made<sup>17</sup>.
- 2.2.18. The SEZ was the subject of many written and oral submissions in the remaining period of the Examination. Full consideration of the matters raised in this regard can be found at Chapter 5.2 of this Report.

### **Minor Changes to the Order Limits**

- 2.2.19. At D1 (15 January 2019) the Applicant submitted two minor changes to the offshore Order Limits [[REP1-001](#)]:
- a small reduction in the extent of the offshore Order Limits in proximity to Ramsgate harbour and westwards toward the landfall to align the Order limits outside of the harbour wall and Thanet Coast SAC. There were consequential revisions to the offshore works and land plans [[REP1-059](#); [REP1-056](#)]; and
  - an amendment to the coordinates of the inner boundary of the Order Limits where the array area would encircle the existing TOWF. The amendment was imperceptible at the scale of the land and works plans, but the coordinates contained within the draft DCO were amended accordingly.

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<sup>16</sup> [Planning Act 2008: Guidance for the examination of applications for development consent](#), DCLG (2015)

<sup>17</sup> [Correspondence from Bob Neill MP, Parliamentary Under Secretary of State to Sir Michael Pitt, Chair, Infrastructure Planning Commission](#), DCLG (28 November 2011).

- 2.2.20. The ExA accepted these changes, which were clearly of limited scale and consequence, as non-material changes to the application. Since all parties had the opportunity to comment on the changes through subsequent written deadlines and hearings, no change to the Examination Timetable was required.
- 2.2.21. The draft DCO was subject to a series of revisions throughout Examination to reflect these changes and other matters arising. These changes are documented more fully in Chapter 11 (the DCO).

## 2.3. OPTIONS

- 2.3.1. Since the project description takes a 'design envelope' approach to dealing with uncertainty in some elements of the project design, a number of options are retained for delivery of the project. For the offshore elements of the project, this includes options relating to the number, physical dimensions and individual generating capacity of WTGs, different foundation types and the precise siting of WTGs and subsea cables. The draft DCO [[REP8-013](#)] allows for 'up to one' offshore substation which may be constructed within maximum design parameters.
- 2.3.2. The 'design envelope' approach is also taken for elements of the onshore infrastructure, retaining optionality in the design of infrastructure, within defined parameters. Aspects of optionality that were under particular scrutiny and comment by the parties during Examination are:
- **Export Cable Landfall Options 1 and 3:** following the non-material change removing Landfall Option 2<sup>18</sup>, the draft DCO contains two design options for landfall of the export cable within Pegwell Bay. This matter is considered within Chapter 5.3 of this Report.
  - **Technology options for the onshore substation:** the application provides for either AIS or GIS technology which has implications for the extent of land required. This matter is dealt with at Chapter 10 of this Report.
  - **Cable routing options within Richborough Energy Park:** the draft DCO retains three options for the cable alignment, with provision that when one route is selected, the other two shall not be used. This matter is reported at Chapter 10 of this Report.

## 2.4. RELEVANT PLANNING HISTORY

- 2.4.1. The Proposed Development is an extension of the existing operational TOWF. The TOWF comprises one hundred turbines and has a total generating capacity of 300 MWe that would be surrounded but otherwise unaffected by the Proposed Development. The TOWF also connects to the national transmission system at the Richborough Energy Park [[APP-025](#)].
- 2.4.2. During Examination, the Applicant and tCE confirmed that no Agreement for Lease (AfL) had yet been secured for property rights to construct the

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<sup>18</sup> See Section 2.2 of this Report

offshore elements of the project [REP5-002]; [REP5-054]. An AfL was contingent on the outcome of a plan-level Habitats Regulations Assessment (HRA) that was underway by tCE. It was confirmed by tCE [EV-039] that this project was unusual in that an AfL had not been secured prior to submission of the DCO application. It was stated by tCE that an AfL in this case would provide for '*a maximum installed capacity of 300 MW or such other maximum capacity as is agreed between the parties*' [REP5-054].

- 2.4.3. On the last day of Examination, tCE confirmed that the plan-level HRA had not, at that date, been completed and therefore that an AfL had not been executed for the Proposed Development [AS-026]. Therefore, at the close of the Examination, the Applicant was not able to demonstrate that it held any property rights to construct the offshore elements of the project. Furthermore, since the outcome of tCE's plan-level HRA was not available, the ExA had only the project-level HRA to inform its recommendation. Whilst the ExA notes the intention of the Applicant and tCE to continue to work toward the execution of an AfL after the closure of Examination, this is not a matter before the ExA and therefore cannot be taken into account in its recommendation.
- 2.4.4. The onshore export cables pass through Kent County Council's historic Cliffsend landfill site, which is believed to have ceased use in 1972 [REP1-128] and now forms part of Pegwell Bay Country Park. The potential implications of this are covered in Section 5.6 of this Report.
- 2.4.5. The LIRs [REP1-091, REP1-098, REP1-128] and other Examination submissions drew to attention to a number of other consents and proposals in the immediate vicinity of the application site; these are considered in Section 1.8 of this Report.

## **2.5. OTHER MAJOR PROJECTS AND PROPOSALS**

- 2.5.1. The Applicant's Cumulative Effects Assessment [APP-039] outlines its approach to identifying potential interactions with other projects and proposals. The ExA's IAPI [PD-006] identified the need to examine the potential relationships between the project and other projects and proposals in the local area, including the Nemo Link, National Grid Richborough Connection and Manston Airport projects.
- Nemo Link is a constructed interconnector between the UK and Belgian transmission systems. The UK terminal substation for Nemo Link has been constructed in Richborough Energy Park and connects to the UK transmission system via the National Grid Richborough Connection.
  - The National Grid Richborough Connection is a substantially constructed NSIP project for which the National Grid (Richborough Connection Project) Development Consent Order was made in 2017.
  - Manston Airport is a former military and then subsequently civil airport that is located north west of Pegwell Bay and Cliffsend, some 1.5 km north west of the cable landfall location. It is not currently

operational. It is the subject of an airport NSIP application, which was under Examination at the point of closure of this Examination.

2.5.2. During Examination, matters were also raised relating to the potential for cumulative or in-combination effects with other projects or proposals, specifically:

- Dover Harbour Board dredging at Goodwin Sands;
- Ramsgate Harbour dredging;
- BritNed Interconnector (a proposed interconnector between the UK and the Netherlands) [[AS-012](#)]; and
- Other planned, consented or operational offshore wind farms.

2.5.3. The potential for interactions with other projects and infrastructure is reported in Section 6.3 (Effects on Other Infrastructure) of this Report, whilst potential cumulative and in-combination biodiversity effects are considered in Section 5.3 (Biodiversity, Ecology and the Natural Environment) and in Chapter 7 (HRA).

## **3. LEGAL AND POLICY CONTEXT**

### **3.1. THE PLANNING ACT 2008**

- 3.1.1. The Planning Act 2008 (as amended) (PA2008) is the governing legislation for a development consent decision.
- 3.1.2. The application falls to be decided under PA2008 s104 (where a National Policy Statement (NPS) designated under PA2008 s5(1) has effect). This is because it is for an electricity generating station subject to the general energy policy set out in NPS EN-1 and to the renewables generating policies applicable to wind energy generating stations in NPS EN-3. It is proposed to be connected to the electricity transmission system by an offshore and onshore cable alignment that affects facilities subject to policies in NPS EN-5.
- 3.1.3. Under s104(2), the matters that the SoS must consider are:
- any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”);
  - the appropriate marine policy documents (if any), made in accordance with section 59 of the Marine and Coastal Access Act 2009;
  - any Local Impact Report (within the meaning given by PA2008 s60(3)) (LIR) submitted to the SoS before the specified deadline for submission;
  - any matters prescribed in relation to development of the description to which the application relates; and
  - any other matters which the SoS thinks are both important and relevant to the decision.
- 3.1.4. S104(3) requires the SoS to decide the application in accordance with any relevant national policy statement, except to the extent that one or more of the exceptions in subsections (4) to (8) applies, creating a presumption in favour of NPS compliant development. The exceptions are that SoS is satisfied as follows:
- deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations (s104(4));
  - deciding the application in accordance with any relevant national policy statement would lead to the SoS being in breach of any duty imposed on her/him by or under any enactment (s104(5));
  - deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment (s104(6));
  - the adverse impact of the Proposed Development would outweigh its benefits (s104(7)); and/ or
  - any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met (s104(8)).
- 3.1.5. The duty placed on the SoS to decide the application in accordance with any relevant National Policy Statement under s104(3) can place the SoS



under a duty to grant or to withhold development consent. In circumstances where a Proposed Development is compliant with the relevant NPS and there are no other matters of statutory relevance that indicate otherwise, then the SoS is placed under a duty and should grant development consent. However, if a Proposed Development does not comply with the relevant NPS in circumstances where the NPS itself describes that non-compliance as a matter in respect of which consent should be withheld, then equivalently the SoS is placed under a duty and should withhold development consent.

- 3.1.6. PA2008 s10(3)(b) requires the SoS to have regard, in designating an NPS, to the desirability of good design. This obligation is delivered through NPS policy.

## **3.2. NATIONAL POLICY STATEMENTS**

- 3.2.1. National Policy Statement (NPS) EN-1 Overarching Energy is the designated NPS containing policy relevant to all energy NSIP development. NPS EN-3 Renewables is the designated NPS that applies to wind energy generating station (offshore wind farm or OWF) development and associated development. Both NPSs are statutory considerations under s104(3) PA2008 (see paragraph 3.1.4 above). The application must be decided by the SoS in accordance with the relevant policy in these NPSs unless one of the exceptions legislated in s104(3) PA2008 applies.

- 3.2.2. Addressing the requirements of PA2008 s10(3)(b), section 4.5 of NPS EN-1 sets out the principles of good design that should be applied to all energy infrastructure. Paragraph 2.4.2 of NPS EN-3 provides that *'[p]roposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, and in the design of the project to mitigate impacts such as noise and effects on ecology.'* The requirement for mitigation in this paragraph employs examples, but should be taken as a general policy position such that adverse impacts identified in policy or deemed as important and relevant by the SoS should be mitigated to a relevant and/ or feasible extent by a Proposed Development that demonstrates good design. The achievement of good design is not limited to aesthetic and visual considerations.

- 3.2.3. NPS EN-5 Electricity Networks is the designated NPS that applies to the development of transmission infrastructure including that connecting the proposed OWF to the electricity transmission system at the grid connection point. This is not an application under NPS EN-5 but that NPS has been considered in relation to the grid connection location and effects upon the transmission system. It is an important and relevant consideration for the SoS under PA2008 s104.

- 3.2.4. NPS Ports (NPSP) is the designated NPS that applies to the development of major ports infrastructure. This is not an application under NPSP, but that NPS has been considered on the basis that the application affects major ports including some that are NSIP Ports and the prospective

development of future ports, most particularly in the Thames estuary. It is an important and relevant consideration for the SoS under PA2008 s104.

- 3.2.5. All NPS policy is considered in relevant sections of Chapters 4 to 8 and in the planning balance in Chapter 9.

### **3.3. MARINE AND COASTAL ACCESS ACT 2009**

- 3.3.1. The Marine and Coastal Access Act 2009 (MACAA2009) is applicable to consideration of the application, because it relates to OWF development at sea.

- 3.3.2. The UK Marine Policy Statement (MPS) applies and must be considered by the SoS under PA2008 s104(2)(aa). It should be noted that whilst the MPS must be considered, it does not benefit from the same presumption in favour of policy that applies to designated NPS policies under PA2008 s104(3). Relevant MPS policy is an important and relevant consideration and is considered in relevant sections of Chapters 5 to 8 and in the planning balance in Chapter 9.

- 3.3.3. The application site and surrounds lie within the area of the South East Marine Plan. A public consultation draft of this plan was programmed to have been published by April 2019. However, by the close of Examination, the latest position available from the MMO was that a consultation draft marine plan would not be available during the Examination period [[REP6A-008](#)] (R17Q4.12.6). There is no published draft text for the ExA to consider in this Report and so marine plan policies are therefore unlikely to be a consideration for SoS under PA2008 s104(1)(aa). However, the SoS may wish to satisfy themselves on the latest position with the MMO prior to decision.

- 3.3.4. Additionally, the Proposed Development affects the Thanet Coast Marine Conservation Zone [[APP-016](#)] and the England Coastal Path designated under MACAA2009. Marine environment effects are addressed in Section 5.3 of this Report, which includes a digest of MPS, Marine Plan and MCZ considerations. Section 5.6 considers effects on public rights of way (PRoWs) and coastal access and route matters are addressed there.

### **3.4. EUROPEAN LAW AND RELATED UK REGULATIONS**

#### **Leaving the European Union**

- 3.4.1. The UK is in the process of departing from the European Union, formal implementation of which is intended to come into effect on 31 October 2019 (Exit Day). Following Exit Day, if a withdrawal agreement is in force, there may be a further implementation period in which the UK will abide by relevant European law and procedure. If there is no withdrawal agreement, then there would be no such period.
- 3.4.2. The European Union (Withdrawal) Act 2018 (the withdrawal legislation) provides that, subject to defined exceptions, European Union law which was extant up to Exit Day will remain in force and be incorporated into

domestic UK law. As such, it would remain in force unless and until the UK Parliament or a relevant SoS (for statutory instruments) amended or repealed the provisions.

- 3.4.3. Although the detail of the UK's departure is not yet settled, this Report has been drafted on the basis that relevant European Union law (primarily environmental law that has been given effect to in UK statutory instruments) will remain in force at the point when the SoS decides this application. It will be a matter for the SoS to satisfy themselves as to the effect of any change to this assumption on their decision.

#### **The Habitats Directive**

- 3.4.4. The Habitats Directive (92/43/EEC) provides a Europe-wide network of protected sites, and a system of species protection.
- 3.4.5. Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 ecological network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species (EPS).

#### **The Birds Directive**

- 3.4.6. The Birds Directive (2009/147/EC) is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. All SPAs form part of the Natura 2000 ecological network.

#### **The Ramsar Convention**

- 3.4.7. The Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat is an international treaty for the conservation and sustainable use of wetlands, signed by the UK in 1971. It does not proceed from European Law. It provides for a network of protected wetland sites (Ramsar sites), which as a matter of policy are treated in the UK as equivalent to sites within the Natura 2000 ecological network.

#### **The Habitats Regulations**

- 3.4.8. The Conservation of Habitats and Species Regulations 2017 (onshore) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (offshore) are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Both sets of regulations are referred to collectively in this Report as the Habitats Regulations. Assessment processes taking place pursuant to these regulations are referred to as Habitats Regulations Assessment (HRA). The SoS is the Competent Authority for HRA under the Habitats Regulations.

3.4.9. These directives and regulations are relevant to this application in view of the presence of Natura 2000 sites and EPS within the study area, as recorded in the Report to Inform Appropriate Assessment (RIAA) [[APP-031](#)][[APP-032](#)][[APP-033](#)]. Chapter 5.3 and Chapter 6 give further consideration to these matters. It should be noted that formal HRA processes under the Habitats Regulations are applicable within the jurisdiction of England and Wales (the UK) and the UK offshore marine area. The Habitats Regulations do not apply to effects on Natura 2000 sites and EPS outside this jurisdiction.

### **Natura 2000 sites and European Protected Species outside UK jurisdiction**

3.4.10. Whilst the Habitats Regulations are not applicable outside UK jurisdiction, the Applicant acknowledges [[APP-031](#)][[APP-032](#)][[APP-033](#)] and the French Government [[OD-002](#)][[OD-009](#)][[AS-006](#)][[REP1-094](#)] has also asserted that the Proposed Development may affect Natura 2000 sites and EPS outside the jurisdiction of the UK. DECC (now BEIS) guidelines provide that the SoS *'will take account of information on impacts on Natura 2000 sites in other Member States provided by the applicant and interested parties, and undertake an assessment of those impacts alongside the appropriate assessment required by the Habitats Regulations'*.<sup>19</sup> Chapter 5.3 and Chapter 7 give further consideration to these matters.

### **The Water Framework Directive (WFD)**

3.4.11. Directive 2000/60/EC establishing a framework for Community action in the field of water policy, the Water Framework Directive or WFD includes objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It provides for the production of river basin management plans (RBMPs) which are designed to integrate the sustainable management of rivers.

3.4.12. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

3.4.13. The WFD is relevant to the application and is reported on in Chapter 5.9.

### **The Marine Strategy Framework Directive (MSFD)**

3.4.14. Directive 2008/56/EC establishing a framework for Community action in the field of marine policy the Marine Strategy Framework Directive or MSFD seeks to achieve Good Environmental Status (GES) of the EU's marine waters by 2020 and to protect the resource base upon which marine-related economic and social activities depend. It contains the

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<sup>19</sup> [Guidelines on the assessment of transboundary impacts of energy developments on Natura 2000 sites outside the UK](#), DECC, March 2015, page 5 para 5

explicit regulatory objective that "biodiversity is maintained by 2020", as the cornerstone for achieving GES.

- 3.4.15. The MSFD is largely implemented in the UK (as recorded in Part 3 of the UK Marine Strategy: UK Programme of Measures 2015<sup>20</sup>) (and in all respects relevant to the Proposed Development) through existing marine legislation, policies and programmes including the MACAA2009, the MPS and Marine Plans prepared under that legislation, MCZs, the SEA and EIA processes, the application of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 and the HRA process, all of which are addressed in this Report as recorded above and below. Outside UK territorial waters, regard should be had to the application of and compliance with the MSFD by other states to whom it is applicable. Consideration of its application to France is given in Chapter 8.

### **The Air Quality Directive (AQD)**

- 3.4.16. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values (LV) are exceeded for ambient air quality with respect to sulphur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>) and mono-nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give direct statutory effect to the AQD.
- 3.4.17. The UK Air Quality Strategy establishes the UK framework for air quality improvements<sup>21</sup>. The UK Air Quality Strategy establishes a long-term vision for improving air quality in the UK and offers options to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants.
- 3.4.18. The AQD is relevant to the application and is reported on in Section 5.6.

## **3.5. MARITIME & RELATED LAW AND PRACTICE**

### **United Nations Convention on the Law of the Sea (UNCLOS)**

- 3.5.1. UNCLOS is an international agreement concluded in 1982, which defines the rights and responsibilities of nations with respect to use of the sea, establishing guidelines for businesses, the environment, and the management of marine natural resources.
- 3.5.2. The ExA has had regard to relevant provision of UNCLOS, particularly in Chapter 5.2.

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<sup>20</sup> [Marine Strategy Part Three: UK programme of measures](#), DEFRA, December 2015

<sup>21</sup> [The Air Quality Strategy for England, Scotland, Wales and Northern Ireland](#) (Defra, 2007)

### **International Convention for the Safety of Life at Sea (SOLAS)**

- 3.5.3. SOLAS (1974) (as amended) is an international maritime treaty which sets minimum safety standards in the construction, equipment and operation of merchant ships. It includes (in Chapter V) general provisions on safe navigation which are applicable to all vessels, requiring all mariners to engage in voyage and passage planning, taking account of all potential dangers to navigation.
- 3.5.4. The ExA has had regard to relevant provisions and the implications for navigation of SOLAS, particularly in Chapter 5.2.

### **International Regulations for Preventing Collisions at Sea (COLREGs)**

- 3.5.5. COLREGS (1972) (as amended) are regulations published by the International Maritime Organisation (IMO) under the Convention on the International Regulations for Preventing Collisions at Sea. They are in effect the 'Highway Code' of the sea, setting out navigation rules to be followed by ships and other vessels at sea to prevent collisions between two or more vessels.
- 3.5.6. The ExA has had regard to relevant provisions and the implications for navigation of COLREGs, particularly in Chapter 5.2.

### **General Provisions on Ships' Routeing (GPSR)**

- 3.5.7. Part A of the IMO publication Ships Routeing<sup>22</sup> sets out General Provisions on Ships Routeing (GPSR) (IMO resolution A.572(14), as amended). These provisions relate to the establishment of a routeing system for ships; the types of systems available; the procedures and responsibilities of member states and the IMO; the planning of, and methods for, establishing a system; design criteria; use of a system; and representation of systems on charts.
- 3.5.8. The ExA has had regard to relevant provisions and the implications for navigation of GPSR, particularly in Chapter 5.2.

### **Electricity Act provisions relevant to offshore energy development and navigation**

- 3.5.9. The Energy Act 2004 amended the Electricity Act 1989 for the following purposes:
- to enable the 'appropriate authority' to make declarations extinguishing public rights of navigation (s36A Electricity Act 1989); and
  - providing specific duties on decision-makers in relation to navigation (s36B Electricity Act 1989), not to grant consents that are likely to interfere with the use of recognised sea lanes essential to international navigation and more generally to have regard to any

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<sup>22</sup> [Ships' Routeing](#), IMO, 2013 (although it should be noted that the GPSR are dynamic and updated when schemes are amended or new ones added).

likely cause of obstruction or danger to navigation in any navigable waters, arising OWF development.

- 3.5.10. These Electricity Act 1989 provisions apply to decisions about offshore generating stations taken under s36 of that legislation. They are not applicable to decision-making under PA2008 and a DCO may make its own provision for the extinguishment or suspension of public rights of navigation (as the dDCO in this case seeks to do). However, in policy terms, these provisions emphasise the importance and relevance of navigation as a consideration for the SoS.

#### **Decision requirement for DMLs**

- 3.5.11. As required by regulation 3A of the Infrastructure Planning (Decisions) Regulations 2010 in respect of a decision relating to DMLs, the ExA has had regard to the need to protect the environment, the need to protect human health and the need to prevent interference with legitimate uses of the sea. These matters are addressed in Chapter 5.2 of this Report.

#### **MCA Marine Guidance Note MGN 543 (M+F) and related material**

- 3.5.12. The MCA's Marine Guidance Note MGN 543 (M+F) (MGN 543)<sup>23</sup> provides guidance on 'Safety of Navigation: Offshore Renewable Energy Installations (OREIs) - Guidance on UK Navigational Practice, Safety and Emergency Response'. OWFs fall within the OREI technologies considered. It includes guidance on siting, structure and safety zones; navigation, collision avoidance and communications; a shipping template for assessing wind farm boundary distances from shipping routes; safety and mitigation measure recommended for OREIs during construction, operation and decommissioning; and search and rescue and emergency response considerations.
- 3.5.13. Annex 2 addresses navigation and collision avoidance and recommends (paragraph 3(c)) that '[r]isk assessments should present sufficient information to enable [the decision maker] to adequately understand how the risks associated with the proposed layout have been reduced to ALARP'.
- 3.5.14. MGN543 replaces MGN371 and should be read in conjunction with:
- MGN 372 (M+F) "Offshore Renewable Energy Installations (OREIs) - Guidance to Mariners operating in the vicinity of UK OREIs", and
  - "Methodology for Assessing the Marine Navigational Safety Risks & Emergency Response of Offshore Renewable Energy Installations" MCA/DECC (2013) (The MCA/DECC Guidance).
- 3.5.15. The MCA/DECC Guidance was published in 2013 and it is still current. In its executive summary it states: '[A]lthough the specifics of this guidance are not mandatory, its use in carrying out marine navigational safety and

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<sup>23</sup> [MGN 543 \(M+F\)](#), MCA, undated

emergency response risk assessments is strongly recommended' and that decision-makers should assess:

- whether the tools and techniques used in assessments conducted by an applicant are acceptable;
- whether a submitted application demonstrates that an OREI will meet the sought-after level of marine navigational safety and emergency response;
- whether there is sufficient information with a submitted application to have confidence in such a conclusion; and
- whether there is sufficient information with a submitted application to have confidence that appropriate risk controls are, or will be, in place.

- 3.5.16. The introduction to the MCA/DECC Guidance at Page 10 states: 'Developers are invited to carry out marine navigational safety and emergency response risk assessments in accordance with the spirit of the methodology and to submit the results in accordance with the standard format for a submission. In carrying out these assessments, developers should address, so far as is reasonably possible, all three phases of the OREI's life, i.e. construction, operation and maintenance, and decommissioning. ... Although the specific aspects of this guidance are not mandatory, it is strongly recommended that developers carry out risk assessments in the spirit of the detail indicated.'
- 3.5.17. Among the features of the methodology described in the MCA/DECC Guidance are that developers are to '[p]roduce a submission based on assessing risk by Formal Safety Assessment (FSA) using numerical modelling and/or other techniques and tools of assessment acceptable to government and capable of producing results that are also acceptable to Government.'
- 3.5.18. The Formal Safety Assessment process referred to in the MCA guidance is that of the International Maritime Organisation (IMO) submitted by the Applicant to Examination as [[REP3-013](#)]<sup>24</sup>.
- 3.5.19. These matters are addressed in Chapter 5.2 of this report.

### **UNESCO Marine Spatial Planning Guidance**

- 3.5.20. In seeking to explain the approaches and standards to be met in navigation risk assessment, the Applicant introduced UNESCO guidance "*Marine Spatial Planning – a step-by-step approach*" ([[REP5-012](#)] - the guidance is linked at action point 7)<sup>25</sup> (the UNESCO MSP Guidance). It did so noting: '*[t]hat guidance is also directed primarily at the general process of preparing marine spatial management plans and is not directly applicable to individual projects. The Applicant would note that whilst it is not applicable, given that it is directed at the preparation of marine spatial plans, its broad principles of considering existing and future activities have been reflected in the NRA which methodologically follows*

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<sup>24</sup> MSC-MEPC.2/Circ.12/Rev.2 April 2018: Revised Guidelines for Formal Safety Assessment (FSA) for use in the IMO rule-making process.

<sup>25</sup> The [UNESCO MSP Guidance](#).



*the more specific MGN543 checklist as agreed with stakeholders.* The UNESCO MSP guidance is referred to in the Applicant's NRA Addendum as *'the MSP'*. The ExA has had regard to it in Section 5.2 of this report.

### **Other Risk Management Guidance**

- 3.5.21. In assessing societal risk, the Applicant has also made reference to the Health and Safety Executive (HSE) 1999 document, *Reducing Risk, Protecting People* [[REP5-009](#)]. This document has terrestrial as well as maritime application, but is recorded here as it was referred to in a maritime context. These matters are addressed in Chapter 5.2 of this Report.

### **Provisions and Practice Relevant to Ports, Navigation and Related Authorities**

- 3.5.22. **The Port of London** Authority (PLA) operates as the statutory harbour authority under the Port of London Act 1968 (as amended). PLA works *'to keep commercial and leisure users safe, protect and enhance the environment and promote the use of the river for trade and travel.'* Although the Proposed Development lies close to but outside the statutory limits of the PLA, PLA's London Vessel Traffic Services (VTS) provides traffic information, traffic organisation and navigation assistance to shipping and this service area extends across the western half of the application site.
- 3.5.23. **The Port of Tilbury** Transfer Scheme 1991 Confirmation Order (1992), Port of Tilbury London Ltd (PoTLL) (a company established under the Ports Act 1991 s21) transferred statutory harbour authority powers from PLA to PoTLL which exercises them over its own dock basins, wharf frontages and immediately adjacent waters. PoTLL is part of the Forth Ports group of ports.
- 3.5.24. **The London Gateway Port** Harbour Empowerment Order 2008 established London Gateway Port Ltd (LGPL) as the statutory harbour authority over its own wharf frontage and immediately adjacent waters. LGPL is part of the DP World group of ports.
- 3.5.25. **The London Medway Ports** (including the Ports of Sheerness and Chatham) are established as the Medway Ports Authority under the Medway Ports Authority Act 1973. Port of Sheerness Limited exercises the powers of statutory harbour authority. The London Medway Ports form part of the Peel Ports group of ports.
- 3.5.26. PLA remains the harbour authority for the Thames estuary as a whole, outside the immediate waters controlled by PoTLL, LGPL and the London Medway Ports.
- 3.5.27. It has been recognised since the 16<sup>th</sup> century that expert vessel navigation services are necessary to manoeuvre shipping safely in the Thames estuary, and Thames Pilots provide this service. Initially under the supervision of Trinity House (see paragraph 3.5.31), the Pilotage Act

1987 transferred responsibility for and management of the Thames Pilots to PLA.

- 3.5.28. PLA issues Pilotage Exemption Certificates (PECs) to ships' senior officers who are regular port users and pass an assessment of competence. All other vessels accessing the Estuary take a Thames Pilot to navigate their vessel.
- 3.5.29. **Estuary Services Ltd** (ESL) is a company jointly owned by PLA and Port of Sheerness Ltd to provide fast launch services, transferring Thames Pilots to and from the vessels that they serve, entering and exiting the estuary and the individual ports accessible from it. The closest launch shore base to the Proposed Development is at Ramsgate Pilot Station. Launch services for Pilot boarding and landing from vessels are provided to Tongue Pilot Boarding Diamond (PBD) to the north and North East Spit (PBD) to the west of the Proposed Development.
- 3.5.30. **The Maritime & Coastguard Agency** (MCA) is an executive agency of the Department for Transport (DfT) tasked to prevent loss of life on the coast and at sea by delivering a broad portfolio of services:
- Producing maritime legislation and guidance;
  - Providing registration and certification to ships and seafarers;
  - Applying and enforcing standards for ship safety, security, pollution prevention and seafarer health, safety and welfare for seafarers;
  - Providing maritime and coastal search and rescue (SAR) emergency response throughout the UK;
  - Promoting maritime safety, encouraging economic growth and minimising the maritime sector's environmental impact through the UK Government's maritime safety and environmental strategy, and through the UK Ship Register.
  - The MCA's vision is 'to be the best maritime safety organisation in the world, driving progress towards safer lives, safer ships, and cleaner seas.' The vision is underpinned by four key values: safety, professionalism, trust, and respect.<sup>26</sup>
- 3.5.31. **Trinity House** (the Corporation of Trinity House of Deptford Strond) was established by Royal Charter of King Henry VIII on 20 May 1514 to provide maritime services for the safety and protection of seafarers, commencing with the regulation of Thames Pilotage (although this duty has been transferred to the PLA). It is established under the Merchant Shipping Act 1995 as the General Lighthouse Authority (GLA) for England and Wales, the Channel Islands and Gibraltar. It provides and maintains:
- 66 lighthouses;
  - 9 light-vessels;
  - 450 marine buoys; and
  - 21 beacons.

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<sup>26</sup> [MCA Annual Report and Accounts](#), 2018-19

It inspects and audits local aids to navigation, working with port authorities and harbour masters, carrying out over 11,000 local inspections per year.<sup>27</sup>

## **Natural Environment Law and Practice**

### **United Nations Environment Programme (UNEP) Convention on Biological Diversity 1992**

- 3.5.32. The UK Government ratified the UNEP Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.33. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the UNEP Convention on Biological Diversity 1992 in consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation. In particular, it finds that compliance with UK provisions on environmental impact assessment and transboundary matters, referred to below, satisfy with regard to impacts on biodiversity, the requirements of Article 14 of the Convention (Impact Assessment and Minimizing Adverse Impacts).
- 3.5.34. This is of relevance to the biodiversity and ecological considerations and landscape and visual impact which are discussed in Chapters 5.3, 6 and 7 of this Report.

### **The Wildlife and Countryside Act 1981**

- 3.5.35. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). In England, these sites are identified for their flora, fauna, geological or physiographical interest by Natural England (NE). WACA1981 contains measures for the protection and management of SSSIs.
- 3.5.36. WACA1981 is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV containing miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence would be required from NE.
- 3.5.37. The Act is relevant to the application in view of the sites and species identified in the Environmental Statement (ES) [APP-018 to APP-039]. Relevant considerations are discussed in Chapter 5, 6 and 7 of this Report.

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<sup>27</sup> [Trinity House Report and Accounts](#), 2017-18 and online [corporate information](#).

## **Natural Environment and Rural Communities Act 2006**

- 3.5.38. The Natural Environment and Rural Communities Act 2006 (NERC 2006) makes provisions for bodies concerned with the natural environment and rural communities, in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the conservation of biodiversity (the biodiversity duty). In complying with the biodiversity duty, regard must be had to the UNEP Convention on Biological Diversity of 1992. The Act also requires that, as respects England, the SoS must publish a list of the living organisms and types of habitat which in the SoS's opinion are of principal importance for conserving biodiversity. The ExA has had regard to NERC2006 and the biodiversity duty in all relevant sections of Chapters 5, 6 and 7 of this Report.

### **The UK Biodiversity Action Plan**

- 3.5.39. Priority habitats and species are listed in the UK Biodiversity Action Plan (UK BAP). The UK BAP is relevant to the application in view of the biodiversity and ecological considerations discussed in Chapters 5, 6 and 7 of this Report.

### **Other Natural Environment Legislation**

- 3.5.40. The following additional legislation contains relevant provisions that must be met and the ExA has considered them in forming its findings:
- Weeds Act 1959;
  - Protection of Badgers Act 1992;
  - The Environment Act 1995;
  - Wild Mammals (Protection) Act 1996;
  - The Hedgerows Regulations 1997; and
  - Countryside and Rights of Way (CRoW) Act 2000.

## **Climate Law and Practice**

### **Climate Change**

- 3.5.41. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. This duty has been addressed in the preparation of NPS policies that in turn are identified and applied in this Report.
- 3.5.42. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets, and a duty to reduce UK greenhouse gas emissions to at least 80% below 1990 levels by 2050. These have been taken into account throughout this Report.
- 3.5.43. The Renewable Energy Directive (2009/28/EC) established a target for the UK to equal or exceed 15% of gross final consumption of energy from renewable sources by 2020. To achieve this, UK Government published the National Renewable Energy Action Plan for the UK in July 2010 which adopts the Renewable Energy Directive target and prioritises OWF

development as a means of achieving it, but does not set an upper limit to renewable energy production. DECC (now BEIS) has published a UK Renewable Energy Roadmap (2011) and a Carbon Plan (2011), both of which commit to carbon reductions beyond 2020. The Carbon Plan identifies how the first four carbon budgets under the Climate Change Act 2008 can be met, identifying that the total emissions from the UK power sector need to approach zero by 2050<sup>28</sup>. In this context, OWF development remains strongly strategically supported and this strategic direction has been taken into account throughout this Report.

## **Other Duties on the SoS**

### **The Public Sector Equality Duty**

- 3.5.44. The Equalities Act 2010 established a duty (the public sector equality duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making and is taken into account throughout this Report.

### **Human Rights**

- 3.5.45. The Proposed Development includes a request for CA and TP Powers, and as such can engage relevant rights provided under the European Convention on Human Rights (ECHR) to which the UK is a signatory, and which came into effect in 1953. Convention rights have direct legislated effect in the UK under the Human Rights Act 1998. The application of convention rights is considered in Chapter 10 (CA and TP).

### **The Historic Built Environment**

- 3.5.46. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which it possesses in Chapter 5 of this Report, and the SoS must also have regard to this in making their decision.

## **3.6. STATUTORY DRAFTING SOURCES**

- 3.6.1. The Applicant referred the ExA to the following made Orders and equivalent sources as the primary bases for drafting in the dDCO, cited in the EM [[REP8-015](#)].

OWF NSIP made Orders

- East Anglia THREE Offshore Wind Farm Order 2017;
- Hornsea Two Offshore Wind Farm Order 2014;

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<sup>28</sup> It should be noted that after the closure of this Examination, the Climate Change Act was amended by [Statutory Instrument 1056 \(2019\)](#) to establish a statutory 100% net zero target by 2050. The recommendations in this Report have not taken account of this change due to its timing and it will be a matter for the Secretary of State to consider in their final decision.

- Kentish Flats Extension Offshore Wind Farm Order 2013;
- Other Energy NSIP made Orders
- National Grid (Richborough Connection Project) Order 2018
  - Wrexham Gas Fired Generating Station Order 2017;
  - National Grid (Hinkley Point C Connection Project) Order 2016
  - National Grid (North London Reinforcement Project) Order 2014
  - Hinkley Point C Nuclear Generating Station Order 2013

Orders prior to the inception of PA2008

- Scarweather Sands Offshore Wind Farm Order 2004

Other consenting legislation

- High Speed Rail (London – West Midlands) Act 2017

3.6.2. In addition to the made Orders referred to it, the ExA has additionally made reference to DCO and DML drafting practice in the following Order:

- Burbo Bank Extension Offshore Wind Farm Order 2014 (a round 1 OWF extension project of equivalent scale to the Proposed Development, located close to the entrance to the Mersey estuary and affecting shipping and Port use and development).

3.6.3. The Applicant also requested that the ExA should refer to the Hornsea Three Offshore Wind Farm draft Order for assistance in the development of its thinking around innovative provisions. The ExA duly did so but notes that until an Order containing innovative provisions has been examined and then made by the SoS, little weight can be placed on those provisions as they are in effect both draft and untested. As this Order remained in draft at the point of closure of the Examination, it has been accorded little weight by the ExA on the basis that even if it should be made in the form provided to the Examination before the SoS' decision, the ExA could not consult IPs and OPs in this Examination on its implications.

3.6.4. The ExA was referred and gave due consideration to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the MPO). It should be noted that reference to the MPO as a starting point for drafting is no longer a statutory requirement or provided for in guidance. Whilst some of its provisions have passed into standard OWF practice, given the elapse of time and the making of a large number of OWF Orders under PA2008 since 2009, Planning Inspectorate Advice Note 15 advises reference to be made to previous made Orders (including those under equivalent regimes such as the Transport and Works Act 1992).

## **3.7. TRANSBOUNDARY EFFECTS**

3.7.1. A first transboundary screening under Regulation 24 of the 2009 EIA Regulations and Regulation 37 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations) (transitional provisions) was undertaken on behalf of the SoS on 7 July 2017 following the Applicant's request for an Environmental Impact Assessment (EIA) Scoping Opinion [[OD-001](#)]. The

Planning Inspectorate on behalf of the SoS formed the conclusion that the Proposed Development was likely to have a significant effect on the environment in other European Economic Area (EEA) member states in terms of extent, magnitude, probability, duration, frequency or reversibility. Notice was sent to the Netherlands [OD-004], Belgium [OD-005], France [OD-002], Germany (which did not respond) and Denmark [OD-003] (no comment).

- 3.7.2. A second transboundary screening was made on 15 August 2018 under Regulation 32 of the 2017 EIA Regulations [OD-001]. No new significant effects were identified at the second screening which could impact on additional EEA member states in terms of extent, magnitude, probability, duration, frequency or reversibility. However, on a precautionary basis, notifications were sent to the same EEA states notified in 2017, including Germany. Notice was sent to France [OD-009], Belgium (which did not respond) and the Netherlands [OD-011] on the basis of potential impacts to marine mammals and commercial fisheries and to Germany (which again did not respond) and Denmark [OD-010] (no comment) on the basis of potential impacts to commercial fisheries alone.
- 3.7.3. The regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. As part of this consideration and following a request from the French Government to participate in its response to the August 2018 consultation [OD-009], specific steps were taken to enable the French Government and its relevant Departments and Agencies to participate in the Examination [PD-007] and a provisional procedural decision provided for ISH1 into International Matters [PD-006] (Annex G) at which transboundary issues were orally examined. Two WRs were received from French instrumentalities [AS-006][REP1-094] raising the possibility of likely significant effects (LSE) on Natura 2000 sites in French territory, fishing and maritime security considerations, but despite an invitation to do so, the French Government did not attend ISH1 and nor did it respond to any of the ExA's written questions.

## **3.8. THE NATIONAL PLANNING POLICY FRAMEWORK**

- 3.8.1. The National Planning Policy Framework (NPPF) and its accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied, for the particular purposes of making Development Plans and deciding applications for planning permission and related determinations under the Town and Country Planning Act 1990 (as amended) (TCPA1990). NPPF paragraph 5 makes clear that it is not a source of individual or project-specific policy for NSIP decision-making.
- 3.8.2. NPSs can refer directly to policy and guidance relevant to TCPA planning and by so doing draw relevant policy and guidance into the NPS policy framework. The NPS EN suite was designated before the approval of the first NPPF and PPG. They refer to relevant Planning Policy Statements (PPSs) and Planning Policy Guidance Notes (PPGs), all of which have now

been cancelled. References to PPSs and PPGs in NPS EN-1 and EN-3 have therefore been read as incorporating the relevant replacing text from the NPPF and PPG relevant to biodiversity, flooding, heritage, landscapes and renewable energy, but in any instance of conflict the NPS policy takes precedence.

- 3.8.3. Specific reference is made to NPS EN-1 para 4.1.7 which refers to the former tests for planning conditions in now replaced Circular 11/95 on "The Use of Conditions in Planning Permissions" (or any successor to it) as being applicable to Requirements under a DCO, that should only be imposed in accordance with this guidance. This policy and guidance is now found in the NPPF at paragraph 55 and Planning Practice Guidance which sets out the 'six tests' that were originally found in the circular.<sup>29</sup>
- 3.8.4. The NPPF and PPG have also been considered as necessary to provide the context for consideration of local plan policy.

### **3.9. LOCAL IMPACT REPORTS**

- 3.9.1. PA2008 s104(2)(b) requires the SoS to consider any duly submitted Local Impact Reports at the point of decision. Three such reports were submitted:

- Kent County Council [[REP1-098](#)];
- Dover District Council [[REP1-091](#)]; and
- Thanet District Council [[REP1-128](#)].

- 3.9.2. The main matters raised by the LIRs are identified in Chapter 4 and then considered as required in the individual chapters and sections of the Report that follow.

### **3.10. THE DEVELOPMENT PLAN**

- 3.10.1. The Development Plan for the purposes of the SoS' decision consists of the relevant policies and proposals from any adopted Local Plan (or equivalent Development Plan Documents (DPDs)) in force in the area of the Proposed Development. It also consists of the relevant policies from any adopted Neighbourhood Plans. Consideration must also be given to any emerging plan documents, with the weight accorded to them rising in relation to the degree to which they have undergone public consultation and contain seriously entertained policies and proposals.
- 3.10.2. The Development Plan is not of itself a direct statutory consideration for the SoS. However, relevant plan policy is capable of being an important and relevant consideration. Benefit or detriment in terms of policy compliance or non-compliance falls to be considered as part of the planning balance under PA2008 s104(7).

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<sup>29</sup> [Paragraph: 003 Reference ID: 21a-003-20190723](#); 23 07 2019



## Local Plans

### Kent County Council

- 3.10.3. KCC [[REP1-098](#)] is the minerals and waste planning authority for the application site and has adopted the Kent Minerals and Waste Plan 2016.

### Dover District Council

- 3.10.4. DCC advises [[REP1-091](#)] that the relevant DPDs and policies are as follows:

- Saved policies from the Dover Local Plan 2002.
- Dover District Local Development Framework Core Strategy 2010.
- Dover District Land Allocations Local Plan 2015.
- Dover District Emerging Local Plan (up to 2037) which DCC considers has very limited weight as it is at an early stage of drafting.

- 3.10.5. In relation to the saved policies from the Dover Local Plan 2002, DCC identified that part of the proposed substation site was designated in the Kent Minerals and Waste Plan 1998 as depots and wharfage safeguarded to receive and despatch aggregates and that status is reflected in saved policy. However, the now adopted Kent Minerals and Waste Plan 2016 (see above) has not sustained this allocation.

- 3.10.6. Two strategic policies are considered relevant by DCC:

- Core Strategy Policy DM15 seeks to protect the open countryside; and
- Core Strategy Policy DM16 seeks to avoid harm to landscape character.

Both policies provide exceptions for the development of allocated sites, subject to the appropriate mitigation of relevant harms. DM15 additionally provides exceptions for development justified to serve the needs of agriculture or the sustainability of rural communities. DDC identifies that whilst the Proposed Development does not strictly accord with either policy, the need for renewable energy, the justification provided by the Applicant for the proposed site and the proposed mitigations are sufficient to deliver broad policy compliance. The application of these policies is considered further in Chapters 5 and 6.

- 3.10.7. One site allocation is considered relevant by DCC:

- The Baypoint Sports Club is allocated as protected open space.

This is a matter that is relevant to consideration of objections by Ramac [[RR-056](#)] to CA of land for the substation site and proposals by that IP that the Baypoint land might have been considered as an alternative substation site, addressed in Chapter 11.

### Thanet District Council

- 3.10.8. TDC advises [[REP1-128](#)] that the relevant DPDs and policies are as follows:

- Saved policies from the Thanet Local Plan 2006;

- The draft Thanet Local Plan 2019 (submission draft) which is considered likely to be the subject of an adoption decision before the decision on the Proposed Development; and
- Air Quality Technical Planning Guidance (2016) (SPD)

3.10.9. In relation to the saved policies from the Thanet Local Plan 2006, TDC identifies policy CC1, which provides that development in the countryside will be permitted where the need outweighs the harm.

3.10.10. In relation to the submission draft Thanet Local Plan 2019, TDC identifies the following policies as relevant:

- Policy CC04 encourages the use of renewable energy installations in new and existing development whilst mitigating against any detrimental effects.
- Policy SP21 concerns development in the countryside applying the same test as saved policy CC1 from the 2006 plan, with the additional proviso that any adverse environmental effects should be avoided or fully mitigated.
- Policy CC07 outlines how proposals for the development of renewable energy facilities at Richborough will be permitted if it can be demonstrated that the development will not be detrimental to nearby sites of nature conservation value or that any potential effects can be fully and suitably mitigated.
- Policy SP35 ensures new development takes account of adapting to climate change by minimising vulnerability, providing resilience to the impacts of climate change, reducing emissions and energy demands, and seeks opportunities to reduce the impact of climate change on biodiversity.

### **Canterbury City Council**

3.10.11. Canterbury City Council Local Plan (2006) saved policies and Canterbury City Council Local Plan Publication Draft 2014 (emerging policy) is relevant exclusively to any effects arising through any change to the setting of the scheduled monument at Reculver.

### **Neighbourhood Plans**

3.10.12. The ExA asked the Applicant, KCC, DDC and TDC in ExQ2.0.3 [[PD-016](#)] about the relevance to the application site of any Neighbourhood Plans, either adopted or under preparation. Following contact with the relevant planning authorities, the Applicant advised that no neighbourhood plans were in force on any part of the application site, or were likely to be by the time of the SoS' decision [[REP5-002](#)] (at page 6). DDC [[REP5-057](#)] concurred with this assessment for its area. KCC deferred to the relevant local planning authorities and TDC did not provide the requested response. However, the ExA is satisfied that, the Applicant having made inquiries in the TDC area, there are no neighbourhood plans in force or likely to come into force there that would affect the Proposed Development.

## **4. THE PLANNING ISSUES FRAMEWORK**

### **4.1. INTRODUCTION**

- 4.1.1. This chapter identifies the planning issues in the Examination. It opens with a record of the ExA's initial assessment of principal issues [[PD-006](#)] (Annexe B) and then indicates how these issues evolved during the Examination.
- 4.1.2. It provides a record of the issues arising from Examination processes including:
- Local Impact Reports (LIRs);
  - Written submissions;
  - Oral processes; and
  - Site inspections.
- 4.1.3. It provides an overarching response highlighting major decision issues on the following matters:
- Conformity with relevant National Policy Statements (NPSs);
  - Conformity with the Marine Policy Statement (MPS) and relevant Marine Plans;
  - Conformity with Development Plans; and
  - The application of other policies.
- 4.1.4. It records the application of processes and overarching responses relevant to Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA).
- 4.1.5. This chapter commences the ExA's reasoning process on the application. To the extent that it sets out conclusions on certain matters, it is important to note that these conclusions have been reached in the light of all relevant submissions and evidence, integrating all important and relevant matters reported on in Chapters 5, 6, 7 and 8 below. The statement of conclusions in this chapter aims to assist the reader by framing high-level matters that will assist when reading the more detailed analysis of planning issues below, before moving on to that detail. However, readers should note that all conclusions here are constructed from an aggregate of the detailed reasoning in the later chapters, which form their building blocks.

### **4.2. MAIN ISSUES IN THE EXAMINATION**

- 4.2.1. As required by s88 PA2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) Rule 5, the ExA undertook an Initial Assessment of Principal Issues (IAPI) arising from the application within 21 days of the day after receipt of the s58 certificate of compliance provided by the Applicant. The issues identified in that initial assessment were as follows:
- Biodiversity, Ecology and Natural Environment Effects;
  - Construction Effects;

- Compulsory Acquisition (CA), Temporary Possession (TP) and other Land or Rights Considerations;
- The Draft Development Consent Order (dDCO);
- Debris, Waste and Contamination Effects;
- Electric and Magnetic Fields (EMFs) Effects;
- Electricity Connections and Other Utility Infrastructure;
- The Environmental Statement (its adequacy and matters generally arising from it);
- Fishing and Fisheries Effects;
- The Historic Environment;
- Marine and Coastal Physical Processes;
- Navigation Effects – Marine and Air;
- Noise and other public health effects;
- Other Projects and Proposals;
- Socio Economic Effects;
- Townscape, Seascape, Landscape and Visual Impacts;
- Transportation and Traffic Effects; and
- Water Environment Effects.

4.2.2. 'Applicable law and policy' was not identified as a topic in the IAPI, as it must be considered by the ExA at all times. It provides the framework within which the Examination was conducted and is summarised in Chapter 3 of this Report above.

4.2.3. The IAPI was provided to all recipients of the ExA's Rule 6 Letter [[PD-006, Annex B](#)] and discussed at the Preliminary Meeting (PM) [[EV-004](#)][[EV-041](#)]. NE sought assurances that domestic statutory protection for species and sites relevant to terrestrial and maritime biodiversity conservation such as SSSIs and MCZs would fall within scope. The ExA provided reassurance at the PM that these would be a consideration within its Examination of biodiversity matters. No other changes to the IAPI were sought and the ExA proceeded to examine the application based on this issues framework.

4.2.4. The ExA retained a continuous review of all issues raised by the Applicant, IPs and OPs throughout the Examination. Whilst matters of detail were raised, all of these were examined within the broad framework provided by the IAPI and no new high-level issues were introduced.

4.2.5. In accord with long-established Planning Inspectorate practice, the issues in the IAPI were listed in alphabetical order, with no weighting as to their likely importance. The relative importance and relevance of issues becomes apparent as an Examination progresses. Certain issues assumed a very substantial importance, capable of bearing directly on the recommendation in this report. Some issues became more contributory in nature, relevant to the assessment of the effectiveness of mitigation and to the overall planning balance but only influencing the recommendation in aggregate, alongside other issues. Certain issues are clearly primary in nature and need to be assessed first, because they give rise to effects that flow through to other issues, which are contingent upon them and need to be assessed later. It should be noted

that all issues identified in the IAPI remained important and relevant in the view of the ExA. None fell away completely, and all are reported on.

4.2.6. In response to this differentiation of issues, the remainder of this Report is structured to address primary issues in Chapter 5 and contingent and consequential issues in Chapter 6. In making this breakdown, the following should be noted:

- All matters reported upon in both chapters are important and relevant matters.
- Maritime navigation has been separated from air navigation. Whilst these two topics were combined in the IAPI, they do not share a common technical background. Maritime navigation became the most contested issue in the Examination, one where many submissions and substantial bodies of evidence were examined. It is substantially important: a matter in respect of which the ExA recommends the SoS' decision should turn. In contrast, whilst air navigation remains as a primary issue, it was not substantially contested, there is less detail and it is not a matter on which the SoS decision is likely to turn. In the interests of technical clarity, it required to be separated from maritime navigation.
- Issues around debris, waste and contamination remain important and relevant considerations. However, with the exception of matters relating to the installation of onshore cables in former landfill at Pegwell Bay, these were not the subject of substantial contention. These matters onshore are considered in construction effects (considered in Section 5.6), and offshore in the water environment (Section 5.9).
- Issues around effects on land transportation, highways and the PRoW network remain important and relevant considerations. However, they too were not the subject of substantial contention. On the basis that they relate most closely to construction effects, they have been considered by the ExA alongside construction matters in Section 5.6 of this Report.
- Section 6.5 has been added to Chapter 6 to address a small number of issues which require formal consideration but do not neatly fit into the issues framework.
- Chapter 7 stands alone and has been drafted to ensure that the SoS has the information to hand to make necessary determinations as the Competent Authority for HRA.
- Chapter 8 equally stands alone and has been drafted to enable the SoS to deliver the decision-making process for Natura 2000 sites outside the UK set out in "*Guidelines on the Assessment of Transboundary Impacts of Energy Developments on Natura 2000 Sites Outside the UK*", published by DECC (now BEIS) in 2015<sup>30</sup>.

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<sup>30</sup> [Guidelines on the Assessment of Transboundary Impacts of Energy Developments on Natura 2000 Sites Outside the UK](#), Department of Energy and Climate Change (DECC, now BEIS) 2015

4.2.7. The structure of this Report and the management of the planning issues is as follows:

***Primary issues (Chapter 5)***

- Section 5.2: Maritime navigation, shipping and ports;
- Section 5.3: Biodiversity, ecology and the natural environment;
- Section 5.4: Townscape, seascape, landscape and visual effects;
- Section 5.5: Historic environment;
- Section 5.6: Construction;
- Section 5.7: Noise & other public health effects;
- Section 5.8: Marine and coastal physical processes;
- Section 5.9: Water environment;
- Section 5.10: Air navigation, aviation and airports; and
- Section 5.11: Electric & magnetic fields.

***Contingent issues (Chapter 6)***

- Section 6.1: Introduction;
- Section 6.2: Fishing & fisheries;
- Section 6.3: Effects on other infrastructure;
- Section 6.4: Socio-economic effects; and
- Section 6.5: Other effects.

***Habitats and Birds Directives (HRA and International) Issues (Chapters 7 and 8)***

- Chapter 7: HRA (European Sites and EPS within the UK); and
- Chapter 8: Natura 2000 (European Site and EPS outside the UK).

## **4.3. ISSUES ARISING IN EXAMINATION PROCESSES**

### **Introduction**

4.3.1. This section frames the main issues as they appeared following the closure of the Examination, but all consideration of issues is set out in the following Chapters of this Report.

4.3.2. As is identified in section 4.2 above, the Examination process did not identify any new issues in principle that had not been identified in the IAPI. Nor did any of the IAPI issues completely fall away to a point where they ceased to be important and relevant. The Examination did however interrogate the IAPI issues has enabled the ExA to differentiate between matters as follows:

- matters of primary policy relevance to the SoS' decision; and/ or
- matters that are weighty in the planning balance either for or against the grant of development consent; and
- matters where, subject to appropriate security in the dDCO and/ or the appropriate content of relevant environment management plans and processes and agreement with relevant authorities, the Proposed Development has broadly policy compliant and/or neutral effects.

## Issues Arising

- 4.3.3. Having given full consideration to information arising from all RRs, WRs, responses to questions, oral submissions provided at hearings and observations made at site inspection, the ExA has identified that Proposed Development gives rise to five broad themes and modes of engagement between the Applicant and relevant communities.
- 4.3.4. In respect of **onshore representative bodies, business and residential communities not directly affected**, the Proposed Development was either uncontroversial or supported. It enjoyed the positive support of one host local authority (TDC) and whilst the other host authorities KCC and DDC both raised elements of objection (relating to open space and to seascape, landscape and visual effects), both also recognised that the Proposed Development delivered substantial renewable energy benefits and considered that the mitigation proposed to manage adverse onshore impacts were broadly appropriate. There was only limited involvement in the Examination from members of the local business and residential community who were not directly affected, as is in part demonstrated by the fact that the requested Open Floor Hearing (OFH) was closed without any oral submissions having been made<sup>31</sup>. The issues raised by onshore communities are addressed in Chapters 5 and 6.
- 4.3.5. In respect of **onshore owners and occupiers of land directly affected** by the Proposed Development (Affected Persons), there were outstanding objections to CA and TP that remained unresolved. Concerns raised by statutory undertakers and other infrastructure providers were largely resolved and statutory undertaker objectors mostly withdrawn. Both sets of issues are addressed in Chapter 11.
- 4.3.6. In respect of the **Thanet fishing community**, there were a considerable number of objecting RRs and active participation in the Examination at two ISHs. The fishing community took a pragmatic view of the Proposed Development. Having operated with the existing TOWF for a number of years, they wished to ensure that the Applicant appropriately recognised and mitigated the harms to fisheries, vessels and businesses that can emerge from OWF development, whilst observing scope for effective cohabitation and the potential for positive business and employment opportunities associated with construction, operation and maintenance for some members of the fishing community. These issues are addressed in Chapter 6.
- 4.3.7. In respect of the **shipping, ports and pilotage community and maritime statutory regulators**, there was almost unanimous technical

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<sup>31</sup> It should be noted that separate arrangements had been made to hear the local fishing community at ISH6 and a component of ISH8. Whilst these issue specific hearings had structured Agendas, they were also managed in part after the style of an OFH. On that basis, the needs of some fishing community IPs who may otherwise have made submissions at an OFH were met using these other methods.

concern that the Proposed Development had neither effectively identified or mitigated its adverse effects on their interests. The siting of the proposed offshore array area would make navigation in waters around the Proposed Development less safe, deterring some use of an inshore route between the existing TOWF and the Kent shore, used by vessels entering and departing the Thames estuary ports.

- 4.3.8. The navigation risk effects of the application as submitted were deemed unacceptable by these parties, who sought mitigation at least through a substantial reduction in the array area. When asked to provide submissions on the prospective extent of reduction that would be necessary to assure control of this risk, the majority of stakeholders identified a c.50% reduction from the northern and western sectors of the Proposed Development. The Applicant in response was clear that an OWF inclusive of such a reduction would not constitute an economically feasible or deliverable development.
- 4.3.9. Even with a SEZ proposed as a material change by the Applicant part way through the Examination in place that would deliver a more limited increase in sea room in the inshore route and for vessels taking on or setting down pilots, general opinion in this group was that this change was insufficient, and that the Applicant had failed to reduce the navigation risk in surrounding waters to ALARP.
- 4.3.10. Consequential effects of that failure in the view of this community ranged from impacts on the delivery of Thames pilotage services, increases in steaming time, delay and reductions in the efficiency, flexibility and availability of Port operations in the Thames, with adverse economic effects. These matters are addressed in Chapter 5 and specifically in Section 5.2. They are also addressed (in relation to social and economic effects) in Section 6.4.
- 4.3.11. In respect of the **natural environment**, concerns about effects on habitats and species (including on Natura 2000 sites and EPS) were raised by UK and French government instrumentalities and by NGOs. In general terms, stakeholders considered that the Proposed Development had sufficiently avoided harm or that mitigation would appropriately manage its adverse effects. Whilst evidence from NE suggested possible AEOIs in relation to a small number of features and European Sites in combination, the *de minimis* contribution of the Proposed Development to those suggested effects led the ExA to conclude no effects.
- 4.3.12. Suggested adverse effects outside the UK were not supported by relevant evidence. These matters are addressed in Section 5.3 and in Chapters 7 and 8.



## **Conclusions on Issues Arising from Examination Processes**

4.3.13. All issues arising from both unwithdrawn written and oral submissions have been taken into account by the ExA, as have relevant matters arising from site inspections<sup>32</sup>.

- Examination processes identified a broad range of effects from the Proposed Development that were beneficial, neutral, or if adverse were capable of appropriate mitigation.
- Examination processes also identified unresolved concerns; in summary that navigation risk had not been reduced to ALARP and that a clear case for the extent of land to be taken through CA for some onshore works had not been made out.
- Matters arising have been carried forward and are addressed as necessary in Chapters 5, 6, 7, 8, 10 and 11 of this Report.

## **4.4. ISSUES ARISING IN LOCAL IMPACT REPORTS**

### **Introduction**

4.4.1. The following issues arose from the duly submitted LIRs.

### **Kent County Council**

4.4.2. KCC [[REP1-098](#)] identifies likely significant effects of the Proposed Development on:

- Pegwell Bay Country Park (open space owned and managed by KCC);
- Highways (with KCC as Local Highway Authority);
- Cycling routes (ditto);
- Public Rights of Way (PRoW) (ditto);
- Heritage; and
- Waste (with KCC as the minerals and waste planning authority).

4.4.3. In the view of KCC, the Proposed Development gives rise to a number of matters of outstanding concern, but the LIR does not raise any of them as indicating against the principle of development. It follows that all can be managed with an appropriate framework of requirements or through consents external to PA2008.

### **Dover District Council**

4.4.4. DDC [[REP1-091](#)] identifies likely significant effects of the Proposed Development on:

- Onshore landscape and visual impacts;
- Offshore landscape and visual impacts;
- Onshore ecology;
- Tourism and recreation;
- Local transport patterns, traffic and access;
- Historic environment considerations;

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<sup>32</sup> See paragraph 4.1.5 above which explains the matters taken into account in conclusions in this Chapter.

- Ground conditions, flood risk and land-use; and
- Air quality, noise and vibration.

4.4.5. DDC also made comments on the dDCO in its LIR.

4.4.6. In the view of DDC, the Proposed Development gives rise to a number of matters of outstanding concern, including some that are not strictly in accordance with relevant development plan policies, but DDC agrees that in general terms the proposed mitigation is sufficient to overcome these concerns. It follows that all can be managed with an appropriate framework of requirements or through consents external to PA2008. DDC does refer to the need for care in the discharge of requirements, in the implementation, monitoring and maintenance of works delivered pursuant to requirements and the delivery to plans approved under requirements.

### **Thanet District Council**

4.4.7. TDC [[REP1-128](#)] identifies likely significant effects of the Proposed Development on:

- Air quality and emissions;
- Biodiversity and geological conservation;
- Historic environment;
- Landscape and visual impact;
- Noise and vibration;
- Socio-economic and tourism; and
- Traffic and transportation.

4.4.8. In the view of TDC, the Proposed Development gives rise to a number of matters of outstanding concern, but again, the LIR does not raise any of them as indicating against the principle of development and no breaches of development plan policy are identified. TDC makes clear that '*it supports the principle of the development for renewable energy as a key tenant [sic] of sustainable development.*' [[REP1-128](#)] (at para 5.6). It follows that all can be managed with an appropriate framework of requirements or through consents external to PA2008.

### **Conclusion on LIR Issues**

4.4.9. The ExA has taken all issues arising from the LIRs into account.<sup>33</sup>

- Concerns by KCC about effects on its public open space are noted but these are considered to be mitigable.
- The absence of any concerns in principle from the host local authorities DDC and TDC have been noted and taken into account.
- Analysis in relation to mitigation is carried forward and addressed in Chapters 5, 6, 7, 8, 10 and 11 of this Report to ensure that the LIR matters are fully considered as required by the SoS.

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<sup>33</sup> See paragraph 4.1.5 above which explains the matters taken into account in conclusions in this Chapter.

## 4.5. CONFORMITY WITH NATIONAL POLICY STATEMENTS

### Introduction

- 4.5.1. This section reviews conformity of the Proposed Development with the relevant NPSs, identified in Chapter 3 above as being NPS EN-1 and EN-3. The ExA also considers the relationship between the Proposed Development and NPSP in relation to shipping, navigation and ports and NPS EN-5 (Electricity Networks Infrastructure) in respect of electricity transmission system effects.
- 4.5.2. Detailed findings in respect of the application of individual policies to individual planning issues are set out in Chapters 5 and 6.

### NPS EN-1 and EN-3

- 4.5.3. NPS EN-1 and EN-3 policies that are relevant to OWF development (the designated Energy NPSs) provide the basis for the operation of the presumption in favour of policy-compliant development found in PA2008 s104(3). Where that section refers to 'any relevant national policy statement', reference must be made back to s104(2) (a) which is clear that the SoS must have regard to '*any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement")*'. In using the term relevant designated Energy NPS policy, the ExA is referring to those policies from NPS EN-1 and EN-3 which have effect and are relevant to OWF development, directly engaged by virtue of s104(2) (a) and (3). These are the policies that the SoS must decide the Applicant in accordance with.

### NPSP

- 4.5.4. London Gateway Port Ltd. (LGPL) and the Port of Tilbury London Ltd. (PoTLL) made strong representations that because the proposed offshore turbine array location and extent affects ports, shipping, navigation routes, sea room and access to pilotage services for vessels entering and leaving the Thames estuary (the ports, shipping and navigation matters) together with the future prospects for existing and additional NSIP ports development to meet need for such facilities in this location, the designated NPS for Ports (NPSP) should also be considered ([\[REP1-146\]](#) at section 3). These submissions were broadly supported by other maritime IPs [\[EV-006\]](#).
- 4.5.5. The ExA tested this point and these parties agreed with the Applicant that the NPSP was not a designated NPS considered to have effect for decision-making purposes in respect of an OWF and so is not a source of relevant designated Energy NPS policy. However, the maritime IPs, OPs and the Applicant also agreed with the ExA that the relevant content of the NPSP should be an important and relevant consideration for the SoS under PA2008 s104(1)(d). Performance under NPSP is therefore a matter addressed in relevant individual sections and under the planning balance.

## **NPS EN-5**

- 4.5.6. Finally, the ExA has given consideration to NPS EN-5 relating to electricity transmission infrastructure. This is not is not a source of relevant designated Energy NPS policy, as the Proposed Development does not include the development of a transmission alignment as such. The cable alignments included in the Proposed Development are associated development to a generating station development. However, it is prospectively important and relevant, as the Proposed Development is required to connect with the transmission system at Richborough Energy Park, which is the terminal point of the Richborough Connection, a consented EN-5 NSIP. This is also the location of the NGET substation by which exported electricity would be connected to the grid, extensive transmission, international interconnector and distribution system infrastructure. It follows that the ExA considers that relevant policy from NPS EN-5 is important and relevant.

### **Conclusion on NPS Policy**

- 4.5.7. Taking all relevant policies into account, the ExA concludes as follows.<sup>34</sup>
- NPS EN-1 and EN-3 are the relevant designated Energy NPS with which the application must comply.
  - Particular instances of NPS EN-3 non-compliance relating to shipping, navigation safety and ports have been identified. These are analysed in Section 5.2 below and are of substantial importance to the decision: they require the SoS to form a view about whether to grant or withhold development consent.
  - A broad range of other matters arising from NPS EN-1 and EN-3 are generally complied with and are addressed in Chapters 5 and 6.
  - NPSP gives rise to important and relevant considerations, amongst which are the social and economic effects of the Proposed Development on existing and future NSIP port developments and on the achievement of Government policy for ports including for competition and resilience. These are analysed in Section 5.2 below and form part of the planning balance.
  - The application affects electricity network infrastructure above the NSIP threshold and NPS EN-5 is an important and relevant consideration but is generally complied with.

## **4.6. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS**

### **Introduction**

- 4.6.1. This section reviews conformity of the Proposed Development with the relevant Marine policy framework identified in Chapter 3 above.

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<sup>34</sup> See paragraph 4.1.5 above which explains the matters taken into account in conclusions in this Chapter.

- 4.6.2. Detailed findings in respect of the application of individual policies to individual planning issues are set out in Chapters 5 and 6.

### **The Marine Policy Statement (MPS)**

- 4.6.3. Paragraph 1.3.2 of the MPS makes clear that NSIP consents including OWF developments are determined in accordance with PA2008 processes. Where a relevant NPS has been designated, such applications must be decided in accordance with the NPS (subject to exceptions), having regard to the MPS. The MPS must be considered but does not bind or mandate a decision by the SoS.

### **Marine Plans**

- 4.6.4. There are no Marine Plans as yet in force or available as a consultation draft for the Proposed Development or its setting. Subject to a check by the SoS' on the status of this point prior to decision, the issue of conformity with Marine Plans does not arise.

### **Conclusion on Marine Policy**

- 4.6.5. Taking all relevant policies into account, the ExA concludes as follows:
- The MPS applies and the Proposed Development is generally compliant with it. However, to the extent that negative impacts on shipping activity, freedom of navigation, navigational safety, ports efficiency and resilience have not been minimised, these are analysed in Section 5.2 below.
  - There are no applicable Marine Plan policies in force.

## **4.7. CONFORMITY WITH DEVELOPMENT PLANS**

### **Introduction**

- 4.7.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with relevant Development Plan policies.
- 4.7.2. Chapter 3 (from paragraph 3.10.1) identifies the LIRs submitted by the relevant local planning authorities. These in turn identify the development plan documents applicable to the onshore components of the Proposed Development.

### **Relevant Development Plan Policies**

- 4.7.3. Dover District Council (DDC) [[REP1-091](#)] identifies that Core Strategy policies DM15 and DM16 are relevant:
- Policy DM15: relates to protection of the countryside; and
  - Policy DM16: relates to landscape character.

DDC identifies that whilst the Proposed Development is not strictly in accordance with either policy, it is justified specifically by its location and incorporates mitigation that ensures that adverse effects are overcome to an acceptable level.

4.7.4. Thanet District Council (TDC) [[REP1-128](#)] identifies that the following policies are relevant:

Local Plan 2006 Saved Policies

- Policy CC1 outlines that development in the countryside will be permitted where the need outweighs the harm
- Policy CC2 identifies a series of landscape character areas: Pegwell Bay; Wantsum Channel; central Chalk Plateau; Quex Park and the Urban Coast. For the urban coast, development that does not reflect the traditional seafront architecture of the area, maintain existing open spaces and long sweeping views of the coastline will not be permitted. Development proposals that conflict with the above principles will only be permitted where it can be demonstrated that they are essential for the economic or social well-being of the area.
- Policy D1 is a general design policy requiring that new development must respect or enhance the character or appearance of the surrounding area and that new development does not lead to unacceptable loss of amenity through noise or vibration.
- Policy D7 designates particular areas in the district as Areas of High Townscape value, where the design, scale of development, separation between buildings, use of materials and landscaping must be complementary to the special character of the area.
- Policy EP2 relates to landfill sites where development will only be permitted where the applicant/developer has demonstrated either that there is no danger from evolving or migrating gas or that reliable arrangements can be made to overcome such danger and any necessary remedial measures can be achieved without unacceptable environmental impact.
- Policy EP5 requires air quality monitoring with an assessment necessary when development leads to an exceedance of national air quality objectives or significant deterioration of air quality.
- Policy HE11 requires archaeological assessment of significance of development sites, whilst Policy HE12 seeks of the preserved and protection of sites of archaeological importance.
- Policy NC6 outlines sites of geological importance without statutory designation known as Regionally Important Geomorphological/ Geological Sites (RIG Sites). The policy states that development that would result in the loss or obstruction of geological features of importance for study and research purposes will not be permitted.

Draft Local Plan 2019 Policies

- Policy CCO4 seeks to encourage the use of renewable energy installations in new and existing development whilst mitigating against any detrimental effects.
- Policy CC07 outlines how proposals for the development of renewable energy facilities at Richborough will be permitted if it can be demonstrated that the development will not be detrimental to nearby sites of nature conservation value or that any potential effects can be fully and suitably mitigated.
- Policy GI01 concerns the protection of Nationally Designated Sites and Marine Conservation Zones (MCZ). Development which would materially harm either directly, indirectly or cumulatively, or detract

from the scientific or nature conservation interest of a Site of Special Scientific Interest, National Nature Reserve or Marine Conservation Zone will not be permitted.

- Policies GI02 concern locally designated wildlife sites and GI03 concerns RIG sites, ensuring that habitats and geological features are protected, with any harm required to be sufficiently mitigated to be considered acceptable.
- Policy SE01 requires that permission for development which is sensitive to pollution will be permitted only if it is sufficiently separated from any existing or potential source of pollution as to reduce pollution impact upon health, the natural environment or general amenity to an acceptable level, and adequate safeguarding and mitigation on residential amenity.
- Policy SE03 requires development on land known or suspected to be contaminated or likely to be adversely affected by such contamination will only be permitted where an appropriate site investigation and assessment has been carried out as part of the application and the proposed remedial measures would be acceptable in planning terms and would provide effective safeguards against contamination hazards during the development and subsequent occupation of the site.
- Policy SE04 outlines the need to protect groundwater, with development in the Special Protection Zone only permitted if there is no risk of contamination to groundwater sources. If a risk is identified, development will only be permitted if adequate mitigation measures can be implemented.
- Policy SE05 promotes the shift to low emission transportation, with development that either individually or cumulatively is likely to have a detrimental impact on air quality required to submit an Air Quality and/or Emissions Mitigation Assessment in line with the Air Quality Technical Planning Guidance 2016
- Policy SE06 concerns noise pollution and development proposals that generate significant levels of noise must be accompanied by a scheme to mitigate such effects, bearing in mind the nature of surrounding uses, whilst proposals that would have an unacceptable impact on noise-sensitive areas or uses will not be permitted
- Policy SP02 aims to accommodate inward investment in job creating development, the establishment of new businesses and expansion and diversification of existing firms, including growth of the Port of Ramsgate as a source of employment and as an attractor of inward investment.
- Policy SP21 concerns development in the countryside with the same test as CC1 from the 2006 plan, with the additional proviso that any adverse environmental effects should be avoided or fully mitigated.
- Policy SP23 seeks to ensure the protection and enhancement of Thanet's historic landscapes, with proposals expected to demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance Thanet's local distinctiveness, including long-distance, open views, particularly across the Dover Strait and English Channel, North Sea and across adjacent lowland landscapes. All development should seek to avoid skyline intrusion and the loss or interruption of long views of the coast and the sea, and proposals

should demonstrate how the development will take advantage of and engage with these views.

- Policy SP34 aims to support, value and have regard to the historic or archaeological significance of Heritage Assets in planning decision making, including protecting the historic environment from inappropriate development.
- Policy SP35 ensures new development takes account of adapting to climate change by minimising vulnerability, providing resilience to the impacts of climate change, reducing emissions and energy demands, and seeks opportunities to reduce the impact of climate change on biodiversity;
- Policy SP41 on Safe and Sustainable Travel states that the Council will work with developers, transport service providers, and the local community to manage travel demand, by promoting and facilitating walking, cycling and use of public transport as safe and convenient means of transport with development expected to take account of the need to promote safe and sustainable travel.
- Policy SP43 seeks that development will be permitted only at such time as proper provision is made to ensure delivery of relevant transport infrastructure with development will be expected to contribute to the provision, extension or improvement, of walking and cycling routes and facilities and to highway improvements.
- Air Quality Technical Planning Guidance (2016) is applicable, although TDC notes that the main sources of construction emissions are sufficiently distant from the Air Quality Management Area (AQMA) to ensure compliance.

4.7.5. TDC accepts that, with relevant mitigation secured in the dDCO and delivered, the Proposed Development would broadly comply with all of these policies.

4.7.6. Kent County Council [[REP1-098](#)] is the minerals and waste planning authority and raises no policies as particularly relevant or concerns that policies have not been met.

### **Conclusion on Development Plan Policies**

4.7.7. Taking all relevant Development Plan documents and policies into account, the ExA concludes as follows.<sup>35</sup>

- The Proposed Development generally conforms with the Development Plans in force in its respective onshore parts.
- It benefits from specific policy support in terms of its role in providing desirable renewable energy development and employment.
- Other policies relating to the open countryside, heritage, environmental protection, water quality, biodiversity conservation, landscape, archaeology and waste are not fully met, but the relevant authorities accept that the benefits of the Proposed Development

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<sup>35</sup> See paragraph 4.1.5 above which explains the matters taken into account in conclusions in this Chapter.



justify these effects and also that appropriate mitigation has been provided.

- There are no high-level conflicts between NPS EN-1 or NPS EN-3 and Development Plan policy that cannot be overcome in principle by appropriate mitigation, so the key decision-making consideration arising from development plan policy relates to the appropriateness of mitigation.
- The ExA has asked for reference to any relevant policies arising from any Neighbourhood Plans and no such plans have been drawn to our attention.

## **4.8. APPLICATION OF MARINE & MARITIME POLICIES & GUIDANCE**

### **Introduction**

4.8.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with other policies or guidance, specifically those relevant to the Examination of the Shipping and Navigation issues of the Proposed Development. These are:

- MGN543: Marine Guidance Note (MGN) 543 (M+F) 'Safety of Navigation: Offshore Renewable Energy Installations (OREIs) - Guidance on UK Navigational Practice, Safety and Emergency Response' published by Maritime and Coastguard Agency (MCA):
- MCA/DECC 2013: "Methodology for Assessing the Marine Navigational Safety Risks & Emergency Response of Offshore Renewable Energy Installations" published by Maritime and Coastguard Agency (MCA) with Department for Energy and Climate Change, 2013.
- IMO FSA guidance: MSC-MEPC.2/Circ.12/Rev.2 April 2018: Revised Guidelines for Formal Safety Assessment (FSA) for use in the IMO rule-making process. International Maritime Organisation.
- IMO COLREGS: International Regulations for Preventing Collisions at Sea (COLREGs) (1972) (as amended) published by the International Maritime Organisation (IMO).
- International Convention for the Safety of Life at Sea (SOLAS) (1974) (as amended).
- United Nations Convention on the Law of the Sea (UNCLOS)
- IMO GPSR: General Provisions on Ships' Routing (GPSR) Part A (IMO resolution A.572(14), as amended) published by the International Maritime Organisation (IMO).
- UNESCO guidance: 'Marine Spatial Planning – a step-by-step approach'
- HSE 1999: '*Reducing Risk, Protecting People*' published by Health and Safety Executive (HSE), 1999

Further detail about the sources and citations of all relevant material can be found in Chapter 3.5 above.

### **Relevant guidance- safety of navigation**

4.8.2. NPS EN-3 para 2.6.154 states that: 'Assessment should be underpinned by consultation with the MMO, Maritime and Coastguard Agency (MCA), the relevant General Lighthouse Authority, the relevant industry bodies

(both national and local) and any representatives of recreational users of the sea, such as the Royal Yachting Association (RYA), who may be affected.'

- 4.8.3. Para 2.6.156 states that 'Applicants should undertake a Navigational Risk Assessment (NRA) in accordance with relevant Government guidance prepared in consultation with the MCA and the other navigation stakeholders listed above.'
- 4.8.4. Para 2.6.157 states: 'The navigation risk assessment will for example necessitate:
- a survey of vessels in the vicinity of the proposed wind farm;
  - a full NRA of the likely impact of the wind farm on navigation in the immediate area of the wind farm in accordance with the relevant marine guidance; and
  - cumulative and in-combination risks associated with the development and other developments (including other wind farms) in the same area of sea.'
- 4.8.5. The ExA considers that '*other developments*' referred to in EN-3 para 2.6.157 (quoted above) as to be considered for cumulative and in-combination risks encompasses not only the existing Thanet OWF and OWF's at the London Array and Kentish Flats in the central-southern part of the Thames estuary but also the development of ports and port infrastructure in the Thames and Medway estuary and rivers that are approached via the 'area of sea' in which the Proposed Development is located; and any shipping channels that are created and marked to guide shipping through waters of restricted depth; and any areas of related capital dredging.
- 4.8.6. As discussed in greater detail in chapter 3.5 above, the MCA Marine Guidance Note (MGN) 543 (M+F) provides guidance on 'Safety of Navigation: Offshore Renewable Energy Installations (OREIs) - Guidance on UK Navigational Practice, Safety and Emergency Response'. OWFs fall within the OREI technologies considered.
- 4.8.7. MGN543 includes guidance on siting, structure and safety zones; navigation, collision avoidance and communications; a shipping template for assessing wind farm boundary distances from shipping routes; safety and mitigation measure recommended for OREIs during construction, operation and decommissioning; and search and rescue and emergency response considerations. These matters are all of specific relevance to the Proposed Development and are addressed in Chapter 5.2 of this report.
- 4.8.8. MGN543 sets out the applicable framework for Navigation Risk Assessment (NRA) that applies to EIA for this OWF Proposed Development. MGN543 states that it should be read in conjunction with the "*Methodology for Assessing the Marine Navigational Safety Risks & Emergency Response of Offshore Renewable Energy Installations*" published by MCA/DECC in 2013.

- 4.8.9. The introduction to this MCA/DECC 2013 methodology states that: '(A)lthough the specifics of this guidance are not mandatory, its use in carrying out marine navigational safety and emergency response risk assessments is strongly recommended'.
- 4.8.10. The introduction to the MCA/DECC 2013 guidance at Page 10 states: 'Developers are invited to carry out marine navigational safety and emergency response risk assessments in accordance with the spirit of the methodology and to submit the results in accordance with the standard format for a submission. In carrying out these assessments, developers should address, so far as is reasonably possible, all three phases of the OREI's life, i.e. construction, operation and maintenance, and decommissioning. ... Although the specific aspects of this guidance are not mandatory, it is strongly recommended that developers carry out risk assessments in the spirit of the detail indicated.'
- 4.8.11. Among the features of the methodology described in the MCA/DECC 2013 Guidance are that developers are to '[p]roduce a submission based on assessing risk by Formal Safety Assessment (FSA) using numerical modelling and/or other techniques and tools of assessment acceptable to government and capable of producing results that are also acceptable to Government.' The Formal Safety Assessment (FSA) process referred to in the MCA guidance is that of the International Maritime Organisation (IMO) submitted by the Applicant to Examination as [\[REP3-013\]](#). This has been addressed in Chapter 5.2 below.
- 4.8.12. MCA/DECC 2013 states that 'Government will base their decision on assessing:
- 'Whether the tools and techniques used in the assessments are acceptable.
  - 'Whether the claim in the submission shows that the OREI will meet the sought-after level of marine navigational safety and emergency response.
  - 'Whether there is sufficient information with the submission to have confidence in the claim.
  - 'Whether there is sufficient information with the submission to have confidence that appropriate risk controls are, or will be, in place.'
- 4.8.13. In a meeting post-application between the Applicant, MCA and TH on 4th Oct 2018, minutes of which were submitted as [\[REP1-086\]](#), TH and MCA both confirmed that they accepted the NRA as broadly compliant with the guidance of MGN543 subject to some suggested improvements to clarify compliance with recommended methods for NRA and reporting but they also stated that they did not consider the reported increase in risk of collision as an effect of the Proposed Development to be acceptable.
- 4.8.14. The Applicant introduced during the Examination a material change that was accepted by the ExA which was subsequently subject to an Addendum NRA. This Addendum exercise should also have followed as far as possible the methodological guidance of MCA, but the ExA is not satisfied that it was carried out with the same rigour or coherence as the original NRA. At [\[REP4C-014\]](#) MCA confirmed that it: '*...remains*

*concerned that there is no current agreement between the IPs and the applicant, and would be keen to see these discussions progress until such time as when agreement can be reached on whether the risk is deemed ALARP with appropriate mitigation. The MCA does have comments on the addendum NRA with regards to mitigation, as it is not clear in this document which mitigations are embedded and which are additional risk control options for the increase in risk.'* These concerns remained outstanding at the end of the Examination.

- 4.8.15. International Regulations for Preventing Collisions at Sea (COLREGs) (1972) (as amended) are regulations published by the International Maritime Organisation (IMO) under the Convention on the International Regulations for Preventing Collisions at Sea. They are in effect the 'Highway Code' of the sea, setting out navigation rules to be followed by ships and other vessels at sea to prevent collisions between two or more vessels. The ExA has had regard to relevant provisions and the implications for navigation of COLREGs, particularly in Chapter 5.2 below in regard to the dynamic risk management procedures of ship's navigators and masters of vessels meeting and the sea space necessitated for manoeuvre to avoid collision.
- 4.8.16. The International Convention for the Safety of Life at Sea (SOLAS) (1974) (as amended) sets minimum safety standards in the construction, equipment and operation of merchant ships. It includes (in Chapter V) general provisions on safe navigation which are applicable to all vessels, requiring all mariners to engage in voyage and passage planning, taking account of all potential dangers to navigation. The ExA has had regard to relevant provisions and the implications for navigation of SOLAS, particularly in Chapter 5.2 below.
- 4.8.17. The United Nations Convention on the Law of the Sea (UNCLOS) is an international agreement concluded in 1982, which defines the rights and responsibilities of nations with respect to use of the sea, establishing guidelines for businesses, the environment, and the management of marine natural resources. The ExA has had regard to relevant provision of UNCLOS, particularly in Chapter 5.2.
- 4.8.18. IMO General Provisions on Ships' Routeing (GPSR) Part A (IMO resolution A.572(14), as amended) provisions relate to the procedures design criteria and responsibilities of member states and the IMO for planning and establishing a system for routeing of shipping and representation of navigational routing on charts. These provisions are of relevance in determination of the status of routes for shipping in the vicinity of the Proposed Development and the ExA has had regard to relevant provisions of GPSR and the implications for navigation, particularly in Chapter 5.2.
- 4.8.19. In relation to societal concerns and societal risk of development of OWFs, the Health and Safety Executive (HSE) 1999 document, '*Reducing Risk, Protecting People*' is also of relevance to this Examination and has been addressed in Section 5.2 of this Report.

4.8.20. As referred to in section 3.5 above, UNESCO guidance '*Marine Spatial Planning – a step-by-step approach*' (UNESCO MSP) [REP5-012] is primarily aimed at preparing marine spatial management plans and therefore not directly applicable to individual projects. However, having submitted it to Examination the Applicant noted '*its broad principles have been reflected in the NRA.*' The ExA has had regard to it in Section 5.2 of this report.

### **Conclusions**

4.8.21. Taking all relevant guidance into account, the ExA concludes as follows.<sup>36</sup>

- MGN543 and its related MCA/DECC 2013 risk assessment methodology are applicable and the Proposed Development is generally compliant with it. However, to the extent that adverse impacts on shipping activity, freedom of navigation, navigational safety, ports efficiency and resilience have not been minimised, these bring the development into conflict with NPS EN-3 policy and are analysed in Section 5.2 below.
- The IMO Formal Safety Assessment (FSA) process referred to in the MCA guidance is relevant to this Examination and has been addressed in Chapter 5.2 below.
- IMO International Regulations for Preventing Collisions at Sea (COLREGs) are of fundamental relevance to the dynamic risk management procedures and sea space necessitated for action to avoid collision of vessels meeting; the ExA has had regard to relevant provisions and the implications for navigational safety, particularly in Chapter 5.2 below.
- HSE1999, 'Reducing Risk, Protecting People' is applicable and the Applicant has referred to it. However, to the extent that adverse impact on societal concerns and societal risk have not been minimised, these bring the development into conflict with NPS EN-3 policy and are analysed in Section 5.2 below.
- UNESCO Marine Spatial Planning (MSP) guidance has some bearing on the assessment of risk to navigational safety and has been taken into account in section 5.2 below.
- IMO General Provisions on Ships' Routeing (GPSR) has relevance in determination of the status of routes for shipping in the vicinity of the Proposed Development and the ExA has had regard to relevant provisions of GPSR and the implications for navigation, particularly in Chapter 5.2.

## **4.9. ENVIRONMENTAL IMPACT ASSESSMENT**

### **Introduction**

4.9.1. As is recorded in Section 1.5 of this Report and for reasons set out there, the application is EIA development subject to the 2017 EIA Regulations. This section records the documents comprised in the ES and changes to those documents provided during the Examination stage. It also records

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<sup>36</sup> See paragraph 4.1.5 above which explains the matters taken into account in conclusions in this Chapter.

the environmental management documents proposed to be used by the Applicant in tandem with DCO provisions to secure the construction and operation of the Proposed Development and the application of mitigation within the worst-case parameters (the Rochdale Envelope) assessed in the ES.

4.9.2. The EIA regulations applicable to NSIPs changed in May 2017 prior to the submission of the application. This section records the ExA's consideration of the application of transitional provisions and sets out a conclusion on their application.

4.9.3. The ExA concludes on the question of whether the submitted ES and EIA process provide an adequate basis for decision-making by the SoS.

### **The Submitted ES**

4.9.4. The submitted ES consists of the following documents in 8 volumes.

- Volume 1: [APP-036] to [APP-041]<sup>37</sup> 6 documents addressing:
  - Introduction;
  - Policy and Legislation;
  - EIA Methodology;
  - Cumulative Effects Assessment;
  - Site Selection and Alternatives; and
  - Cable Ratings Study.
- Volume 2: [APP-042] to [APP-56] 15 documents addressing:
  - Project Description (Offshore);
  - Marine Geology, Oceanography and Physical Processes;
  - Marine Water and Sediment Quality;
  - Offshore Ornithology;
  - Benthic, Subtidal and Intertidal Ecology;
  - Fish and Shellfish Ecology;
  - Marine Mammals;
  - Offshore Designated Sites;
  - Commercial Fisheries;
  - Shipping and Navigation;
  - Infrastructure and Other Users;
  - Seascape, Landscape and Visual Impact Assessment;
  - Offshore Archaeology and Cultural Heritage;
  - Inter-relationships; and
  - Offshore Conclusions and Summary of Key Issues.
- Volume 3: [APP-057] to [APP-069] 13 documents addressing:
  - Project Description (Onshore);
  - Onshore Landscape and Visual Impact Assessment;

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<sup>37</sup> The ES documents are not individually hyperlinked here. References to individual documents in subsequent Chapters are hyperlinked. Readers wishing to access the full ES here should do so using the [Examination Library](#) under references from [APP-036] to [APP-130].

- Socio-Economics;
  - Tourism and Recreation;
  - Onshore Biodiversity;
  - Ground Conditions, Flood Risk and Land Use;
  - Onshore Historic Environment;
  - Traffic and Access;
  - Air Quality;
  - Noise and Vibration;
  - Aviation and Radar;
  - Public Health; and
  - Onshore Conclusions and Summary of Key Issues.
- Volume 4: [APP-070] to [APP-092] 23 documents addressing:
    - Marine Geology, Oceanography, Physical Processes Technical Report;
    - Geophysical Investigation Report 1 of 3 - Operations and Calibration;
    - Geophysical Investigation Report 2 of 3 - Geophysical Site Survey;
    - Geophysical Investigation Report 3 of 3 - Geophysical Site Survey;
    - Geophysical Investigation Report 2 of 3 - Geophysical Site Survey Annex;
    - Geophysical Investigation Report 2 of 3 - Geophysical Site Survey Annex;
    - Water Framework Directive Assessment;
    - Baseline Technical Report - Offshore Ornithology;
    - Assessment of Historical Data from Thanet OWF in comparison to more recent Thanet Extension Data;
    - Range of Displacement Matrices for Seabird Species Recorded in Thanet Extension;
    - Collision Risk Modelling Report Ornithology (Offshore);
    - Export Cable Route Intertidal Report;
    - Benthic Characterisation Report;
    - Marine Conservation Zone Assessment;
    - Site Characterisation Fish Survey Report – Spring 2017;
    - Site Characterisation Fish Survey Report - Autumn 2016;
    - Underwater Noise Assessment;
    - Marine Mammals Technical Report;
    - Commercial Fisheries Technical Report;
    - Navigation Risk Assessment;
    - Pilot Transfer Bridge Simulation Report;
    - Marine Archaeological Desk-based Assessment Technical Report; and
    - Offshore Archaeology Geophysical Baseline.
  - Volume 5: [APP-093] to [APP-123] 31 documents addressing:
    - Socio-economic Baseline;
    - Tourism and Recreation Technical Baseline;
    - Confidential Badger Records;
    - Confidential Ornithology Baseline Report;
    - Ecology Baseline Surveys - Extended Phase 1 Habitat Survey Report;

- Water Vole and Otter Technical Baseline;
  - Great Crested Newt Technical Baseline;
  - Baseline Onshore and Intertidal Ornithology Report;
  - National Vegetation Classification Technical Baseline;
  - Terrestrial Invertebrates Technical Baseline;
  - Reptiles Technical Baseline;
  - Badger Technical Baseline;
  - Bat Technical Baseline;
  - Additional Phase 1 Habitat Survey Report;
  - Additional Great Crested Newt Survey Technical Baseline;
  - Additional Bat Survey Technical Baseline;
  - Inter-tidal Waterfowl Data Analysis;
  - Passage of Ringed Plover;
  - Scientific Names;
  - Phase 1 Geo-environmental Desk Study;
  - Land Use Baseline Report Appendix A (Part 1 of 2);
  - Land Use Baseline Report Appendix A (Part 2 of 2);
  - Land Use Baseline Report Appendices B to H;
  - Flood Risk Assessment;
  - Onshore Archaeology Desk Assessment;
  - Heritage Assets Screening Methodology;
  - Scope of assessment of effects arising through change to setting of onshore heritage assets;
  - Abnormal Indivisible Load Access Study;
  - Onshore Noise and Vibration Technical Report;
  - Noise and Vibration Supporting Information; and
  - Radar Line of Sight Analysis.
- Volume 6: [APP-124] to [APP-128] 5 documents addressing:
    - Landscape Visual Impact Assessment - Onshore Technical Report;
    - Landscape Visual Impact Assessment – Photomontages;
    - Seascape Landscape Visual Impact Assessment - Offshore Technical Report;
    - Seascape Landscape Visual Impact Assessment - Photomontages (Part 1 of 2); and
    - Seascape Landscape Visual Impact Assessment - Photomontages (Part 2 of 2).
  - Volume 7: [APP-129] 1 document addressing:
    - Non-Technical Summary
  - Volume 8: [APP-130] 1 document addressing:
    - EIA Scoping Opinion.

**Changes to the Submitted ES and the Material Change application**

4.9.5. At D2, the following document was submitted to address the removal of Landfall Option 2:

- Review of the ES following the removal of Landfall Option 2 [[REP2-036](#)].



4.9.6. At D3, D4 and D4B the following documents were submitted to address the material change application to introduce a SEZ:

- Review of the Environment Statement and Report to Inform Appropriate Assessment in relation to the Structure Exclusion Zone [[REP4-027](#)];
- ES Addendum – Onshore Heritage [[REP3-055](#)]<sup>38</sup>;
- NRA Addendum [[REP5-039](#)];
- ES Addendum assessing the SEZ proposal [[REP4B-010](#)];
- Implications of the SEZ – Seascape, Landscape and Visual Effects [[REP4B-011](#)];
- Implications of the SEZ – Seascape, Landscape and Visual Effects - Wirelines [[REP4B-012](#)];
- Implications of the SEZ – Onshore Heritage [[REP4B-013](#)]; and
- Implications of the SEZ – Commercial Fisheries [[REP4B-014](#)].

### **Environmental Management Documents**

4.9.7. The ES is supported by the following existing and intended environmental management documents, secured within the DCO as certified documents or required to be formed by DCO requirements and or DML conditions. The documents referred to here are (where already prepared and submitted) are referred to in their most recent versions or (where not yet submitted) in the terms provided for in the security provided for them in the DCO in Appendix D

#### Onshore environmental management

- The Design and Access Statement [[REP5-010](#)]: Requirement 11 requires the details of the onshore substation submitted for approval to the relevant LPA to accord with this.
- The Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP) [[REP4-020](#)]: Requirement 13 requires surveys to monitor the effects of the Proposed Development on saltmarsh to be undertaken as provided for within the SMRMP.
- The Outline Access Management Strategy (OAMS) [[APP-136](#)]: Requirement 14 provides that no stage of onshore connection works in Pegwell Bay Country Park may commence until for that stage an Access Management Strategy in accordance with the OAMS has been approved by the LPA.
- The Outline Landscape and Ecological Management Plan (OLEMP) [[REP1-069](#)]: substation landscaping: Requirement 15 provides that a Substation Landscaping Management Scheme which accords with the OLEMP must be submitted to and approved by the LPA, prior to the commencement of above ground onshore substation works.
- The Code of Construction Practice (CoCP) [[APP-133](#)]: the Construction Environmental Management Plan (CEMP) is required to be formed in accordance with the CoCP by Requirement 18.

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<sup>38</sup> The Applicant's preferred draft DCO Sch 13 [[REP8-013](#)] gives the wrong document reference for this document ([[REP3-029](#)]). The ExA considers that [[REP3-055](#)] was the intended document. This reference has been amended in the Appendix D dDCO.

- Requirement 20 requires the submission to and approval of an Onshore Substation Surface Water and Drainage Management Plan by the LPA before the commencement of construction of the onshore substation. No outline version of this plan was submitted to the Examination.
- The CoCP [[APP-133](#)]: contamination: Requirement 21 provides that no stage of the connection works may commence until a Contaminated Land and Groundwater Plan which must accord with the CoCP has (after consultation with the EA) been approved by the LPA for that stage.
- The CoCP [[APP-133](#)]: construction noise and vibration: Requirement 22 provides that no stage of the connection works may commence until a Noise and Vibration Management Plan which must accord with the CoCP has been approved by the LPA for that stage.
- The CoCP [[APP-133](#)]: traffic: Requirement 23 provides that no stage of the connection works may commence until a Construction Traffic Management Plan (CTMP) which must accord with the CoCP has for that stage been submitted to and approved by the relevant highway authority.
- The Outline Onshore Archaeological Written Scheme of Investigation (Outline Onshore WSI) [[REP5-006](#)]: Requirement 24 provides that no stage of the connection works may commence until for that stage Onshore WSI (which accords with the submitted Onshore WSI) has, after consultation with HistE and KCC, been submitted to and approved by the relevant planning authority.
- The OLEMP [[REP1-069](#)]: landscape and ecological mitigation: Requirement 25 provides that no stage of the connection works may commence until for that stage a written landscape and ecological mitigation plan (LEMP) (which accords with the OLEMP) reflecting the survey results and ecological mitigation and enhancement measures included in the ES has been submitted to and approved by the relevant planning authority in consultation with Natural England.
- Operational Noise Management Plan: Requirement 28 provides that Work No. 13 may not commence before an Operational Noise Management Plan including monitoring, attenuation and any applicable noise limits for the use of Work No. 13 has been submitted to and approved by the relevant planning authority. No outline version of this plan was submitted to the Examination.

#### Offshore environmental management

- The Biogenic Reef Mitigation Plan [[REP4-025](#)] is a certified document.
- The production of a Cable Specification and Installation and Monitoring Plan is secured in the DMLs Schs 11 and 12 (now 10 and 11) at Condition 13(g) and 11(h) respectively. No outline version of this plan was submitted to the Examination.
- The production of a Scour and Cable Protection Plan is secured in the DMLs Schs 11 and 12 (now 10 and 11) at Condition 13(e) and 11(e) respectively. No outline version of this plan was submitted to the Examination.
- The production of a Project Environment Management Plan (PEMP) is secured in the DMLs Schs 11 and 12 (now 10 and 11) at Condition

13(e) and 11(f) respectively. No outline version of this plan was submitted to the Examination.

- The production of a Construction Method Statement (CMS) is secured in the DMLs Schs 11 and 12 (now 10 and 11) at Condition 13(d)(ii) and 11(d)(ii) respectively. No outline version of this plan was submitted to the Examination.
- The Marine Mammal Mitigation Protocol (MMMP) [[APP-146](#)] is secured in the DMLs Schs 11 and 12 (now 10 and 11) at Condition 13(f) and 11(g) respectively.
- The production of a Site Integrity Plan (SIP) for the Southern North Sea SAC: the Outline Site Integrity Plan (OSIP) [[REP6-077](#)] providing for the production of the Southern North Sea SAC SIP is secured in the DMLs Schs 11 and 12 (now 10 and 11) at Condition 13(k) and 11(l) respectively.
- The Fisheries Liaison and Co-Existence Plan (FLCP) [[REP6-057](#)]: The PEMP and DMLs Schs 11 and 12 (now 10 and 11) at Condition 11(e) and 10(e) respectively provide for the preparation of this plan, although outline versions were submitted with the application and revised in Examination.
- The production of an Emergency Response Co-operation Plan (ERCoP) is proposed to be secured at DMLs Schs 11 and 12 (now 10 and 11) at Condition 15(6) and 13(6) respectively (although it should be noted that the MCA are content for the production of this plan to be a matter of direct liaison and do not necessarily seek security for it. No outline version of this plan was submitted to the Examination.
- The Outline Shipping and Navigation Liaison Plan [[REP7-025](#)]: the Shipping and Navigation Liaison Plan is a certified document.
- The Offshore Written Scheme of Investigation (Offshore WSI) [[REP4-021](#)] is secured in the DMLs Schs 11 and 12 (now 10 and 11) at Condition 13(h) and 11(i) respectively.

Schedules of mitigation

- The Applicant maintained a Schedule of Mitigation throughout the Examination, the latest version of which was submitted at D7 [[REP7-017](#)]. This records the relationship between ES mitigation proposals and commitments and the documents and plans by which they are secured, with reference to which DCO and DML provisions.
- A separate Shipping and Navigation Schedule of Mitigation was also provided [[REP7-033](#)].

## **Conclusion**

4.9.8. Taking the EIA process, the submitted ES, the dDCO and related documents proposed to be certified documents into account, the ExA concludes as follows:

- The Proposed Development is EIA development.
- The EIA process is subject to the 2017 regulations.
- The submitted ES, as augmented by the subsequent documents has provided a generally adequate assessment of the environmental effects of the Proposed Development, sufficient to describe the Rochdale Envelope for it and, as referred to within the dDCO, to secure its delivery within that envelope.

- Matters relevant to the NRA and NRA Addendum in respect of which it is the case that navigational risk has not been characterised with sufficient certainty and clarity to enable the SoS to reach decision upon it that are also adequately informed by an understanding of its environmental effects are reserved for Section 5.2 below.

## **4.10. HABITATS REGULATIONS ASSESSMENT**

### **Introduction**

- 4.10.1. This Section sets out the documents submitted to support the HRA process for this application. It should be noted that whilst some of these documents address sites and species outside the jurisdiction of the UK, the conclusions reached here are within the framework set by HRA as described in Chapter 3. Conclusions on sites and species outside the UK are reached in section 4.11 below.

### **Habitats Regulation Assessment issues and evidence**

- 4.10.2. The application was accompanied by a Report to Inform Appropriate Assessment [[APP-031](#)][[APP-032](#)][[APP-033](#)]. This identifies an area of search and relevant European Sites, but it concludes that there are no likely significant effects on those sites or their qualifying features from the Proposed Development.
- 4.10.3. The ExA raised questions and sought advice, particularly from NE. All detailed matters bearing on HRA are addressed in Chapter 7 below.

### **Conclusion**

- 4.10.4. As is normal for NSIP Recommendation Reports, conscious of the role of the SoS as Competent Authority for any AA, the ExA has set out a separate Chapter 7 recording matters relevant to a decision within the framework of HRA and within the jurisdiction of the UK.
- The ExA reserves consideration of and conclusions on HRA for Chapter 7 of this Report.

## **4.11. EFFECTS ARISING OUTSIDE THE UNITED KINGDOM**

### **Introduction**

- 4.11.1. This section addresses the management of effects relevant to the Habitats and Birds Directives that do not fall within the remit of HRA because they arise outside the territory of the United Kingdom. In order to distinguish from the regulatory assessment process that takes place with reference to sites within the UK (HRA), this Report refers to considerations affecting sites outside the UK as 'Natura 2000' issues, a term derived from the name for the European network of protected sites. The employment of this term does not exclude consideration of European Protected Species (EPS).

## **Natura 2000 issues and evidence**

- 4.11.2. Section 3.4 (from paragraph 3.4.10) and Section 3.7 above explain the legal and policy framework applicable to sites and species outside the United Kingdom and the locations of relevant sites and species. The Government of France was the only transboundary consultee to raise substantive concerns [[OD-002](#)][[OD-009](#)][[AS-006](#)][[REP1-094](#)]. It must be recorded that whilst the Government of France was accorded a full opportunity as an OP to participate in oral hearings and/ or to make WRs, it did not participate beyond initial written submissions. The Applicant has responded to these and they are addressed in Chapter 8 of this Report.

### **Conclusion**

- 4.11.3. The assessment of the Proposed Development has addressed potential effects on Natura 2000 sites and EPS outside the jurisdiction of the UK. These do not fall within the scope of HRA but it is policy that the SoS will apply the same assessment principles as are deployed in an AA, alongside the AA process.
- The ExA reserves consideration of and conclusions on Natura 2000 sites and EPS outside the jurisdiction of the UK for Chapter 8 of this Report.

## **4.12. CONCLUSIONS**

- 4.12.1. All conclusions within this chapter have been developed taking full account of detailed submissions and evidence in Chapters 5 to 8. All in turn are taken fully into account the ExA's consideration of the planning balance in Chapter 9.

## **5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES PART A: PRIMARY ISSUES**

### **5.1. INTRODUCTION**

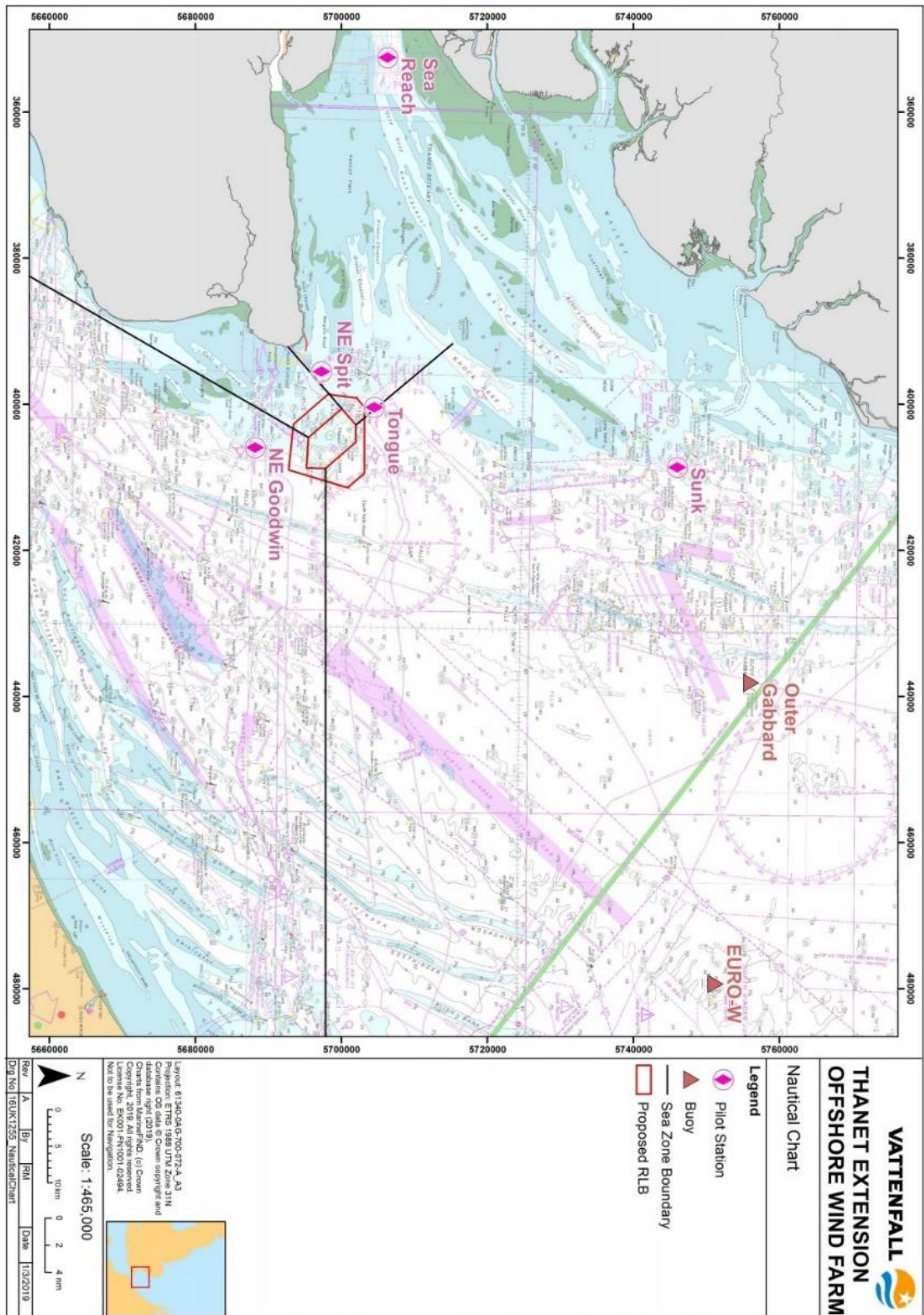
- 5.1.1. This is the first chapter setting out the ExA's consideration of individual planning issues that are important and relevant considerations for the SoS decision on the application. It sets the planning issues out alongside an analysis of the legal and policy framework applicable to each one and integrates any overarching analysis from Chapter 4. It then sets out an ExA conclusion for each one, which is carried forward into the planning balance in Chapter 9 below.
- 5.1.2. The subject matters addressed in this Chapter are ones that in the ExA's consideration appeared to primary in that they were either:
- primary drivers of the SoS decision on the application in and of themselves (owing to the nature of the applicable legal and policy framework and the weight ascribed to the issue); or
  - primary due to their foundation stone nature (for example, before understanding fishing impacts, it is necessary to understand the construction programme and natural environment effects on fish stocks; and before understanding onshore transport effects it is necessary to understand the construction programme too).
- 5.1.3. The following subject matters are addressed in this Chapter:
- Section 5.2: Maritime navigation, shipping and ports;
  - Section 5.3: Biodiversity, ecology and the natural environment;
  - Section 5.4: Townscape, seascape, landscape and visual effects;
  - Section 5.5: Historic environment;
  - Section 5.6: Construction;
  - Section 5.7: Noise & other public health effects;
  - Section 5.8: Marine and coastal physical processes;
  - Section 5.9: Water environment;
  - Section 5.10: Air navigation, aviation and airports; and
  - Section 5.11: Electric & magnetic fields.
- 5.1.4. Chapter 6 sets out those planning issues that are in the ExA's view contingent in nature. This does not mean that they are less important than the issues considered here. Rather it means that it is necessary to evaluate the content of this chapter and reach relevant findings and conclusions, before one can sensibly start to evaluate the content of that chapter.
- 5.1.5. Both this Chapter and Chapter 6 are separate from but related to Chapters 7 and 8 which address all matters relevant to the Natura 2000 network of sites and European Protected Species (EPS) whether these sites are within the jurisdiction of the UK (subject to HRA)(Chapter 7), or in another EEA State (Chapter 8).

## **5.2. MARINE NAVIGATION, SHIPPING & PORTS**

### **Introduction**

- 5.2.1. The impact of the Proposed Development on marine navigation, shipping and ports was the principal issue that generated most attention and contention from IPs and OPs throughout the Examination. The IPs and OPs engaged with this issue are introduced as part of the discussion of Planning Issues below. It is relevant to note that they are primarily either bodies with statutory duties to deliver and maintain a safe and efficient maritime environment or port authorities and the operators of shipping and pilotage services.
- 5.2.2. It should be noted at the outset that pre-application consultation with statutory bodies and other shipping and navigation stakeholders resulted in a reduction in the red-line boundary of the offshore WTG array area. That change was less than had been sought by consultees however, and consequently substantial objections were made in multiple RRs and WRs, which are introduced in the Planning Issues subsection below.
- 5.2.3. IP and OP concerns were essentially focused on:
- the effect of the Proposed Development on navigational safety of shipping traffic in immediately adjacent waters to the Proposed Development;
  - the resilience of facilities and services (including ports and pilotage) accessed by that shipping traffic; and
  - in this context, the degree to which the Proposed Development was policy compliant.
- 5.2.4. Shipping, navigation and ports issues form a field in which policy and practice are underpinned both by sound science and, notably in relation to the management of vessels at sea, by the accumulated experience and judgement of experienced mariners, particularly about questions of safety. These experienced mariners include ships' masters familiar with approaches to the Thames estuary, including pilots retained by relevant statutory port and harbour authorities to provide expert navigation services in the estuary. There are many judgments in the maritime field (and particularly about navigation safety) which are taken by such mariners informed by data and established procedure, and also taking expertise and experience into account. In making findings about what is safe at sea and hence what is compliant with NPS and other relevant policy, the ExA has to balance and evaluate the professional judgements of relevant experts.
- 5.2.5. The Proposed Development surrounds the existing Thanet OWF, extending it into waters to the west, north, east and south, within and immediately adjacent to waters extensively used by shipping (see Figure 5.2.1 [[REP1-025](#)] below). Access to the Thames estuary and to ports within it is a primary consideration.

Figure 5.2.1: The Proposed Development on Nautical Chart<sup>39 40</sup>



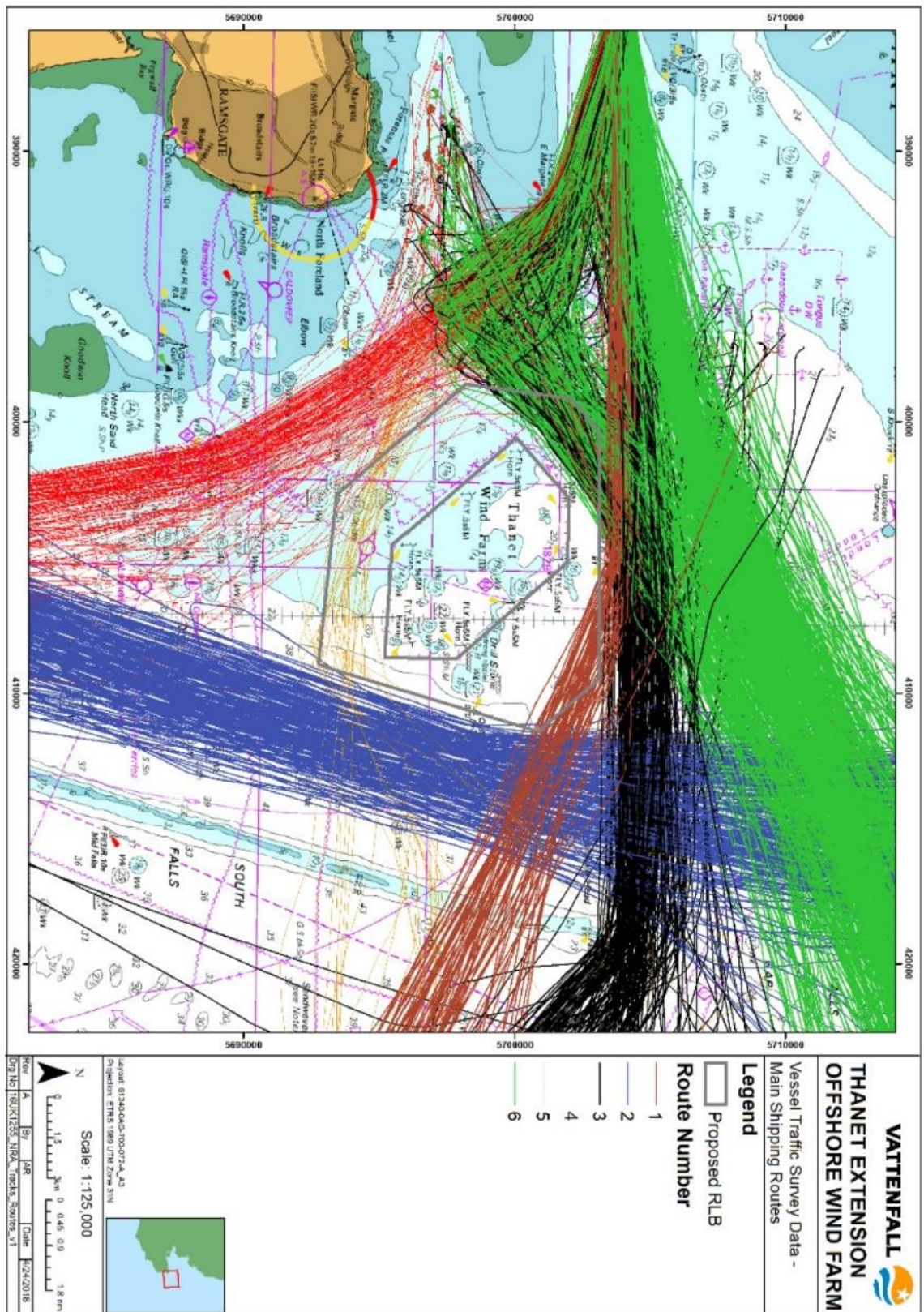
<sup>39</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>40</sup> TEOF on nautical chart base [[REP1-025](#)]



- 5.2.6. The application site lies just outside the statutory limits of the Port of London Authority (PLA). PLA's Vessel Traffic Services (VTS) provides Traffic Information, Traffic Organisation and Navigation Assistance to shipping; the VTS Estuary Sector monitoring and control zone extends across the western half of the application site, as shown by the arc marked as 'London Departures/London Arrivals' on the Figure 5.2.3 below.
- 5.2.7. The Proposed Development is well to the north-east of the Dover Strait Traffic Separation Scheme (TSS) controlling the main north-south international channel routes and well to the south of the Sunk TSS controlling the approaches to Harwich, Felixstowe and the northern, deep-water channel into the Thames. These are illustrated more graphically together with the main routes for shipping around the existing Thanet OWF on the stylised diagram '*Figure 11: Key shipping routes near to development*' from the NRA [[APP-089](#)] included as Figure 5.2.6 below. Traffic movements through the Dover Strait that are not accessing the Thames or Felixstowe and Harwich do not give rise to concerns in regard to this Proposed Development. The significant issues arise from traffic which moves out of or into the main Dover Straits routes or other routes towards or away from the Thames. These issues can be characterised (analogous to land traffic terminology) as 'junction safety and congestion issues'.
- 5.2.8. PLA and the Port of Sheerness Ltd provide pilot services to shipping into and out of the Thames and Medway ports. Outbound vessels over a certain size are required to take a pilot to navigate the vessel from port to the limits of the port – in this case the outer extremity of the Thames estuary. Inbound vessels pick up a pilot at or near the outer extremity of the Thames estuary who is then responsible for their passage into port up the estuary and river. Pilots for ships using the southerly channels of the Thames estuary are transferred from and to pilot cutters or launches at defined locations to the west, south and north-west of the existing wind farm. These locations, known as Pilot Boarding Diamonds (PBDs) and shown on the chart submitted as [[REP1-025](#)] (figure 5.2.1 above), are named North East Spit PBD (to the west of the application site and close to a navigation mark known as 'Elbow' buoy); Tongue Deep Water PBD (to the north-west) and North East Goodwin PBD (to the south). Pilot transfer predominantly takes place at NE Spit PBD, due to its sheltered water close to the North Foreland and its adjacency to the intersection of routes for shipping using the southerly Princes Channel to and from the Thames and Medway.
- 5.2.9. The expression 'dip-down' was used extensively throughout the Examination and in this Report. It can be seen as deviations of shipping tracks shown in routes 3 and 6 (green and black) in Figure 46 of the NRA [[APP-089](#)]: '*Key commercial shipping routes identified (2017)*', reproduced here as Figure 5.2.2. It refers to the manoeuvre of ships using east-west routes to or from a Thames or Medway port dipping to the south to transfer a pilot.

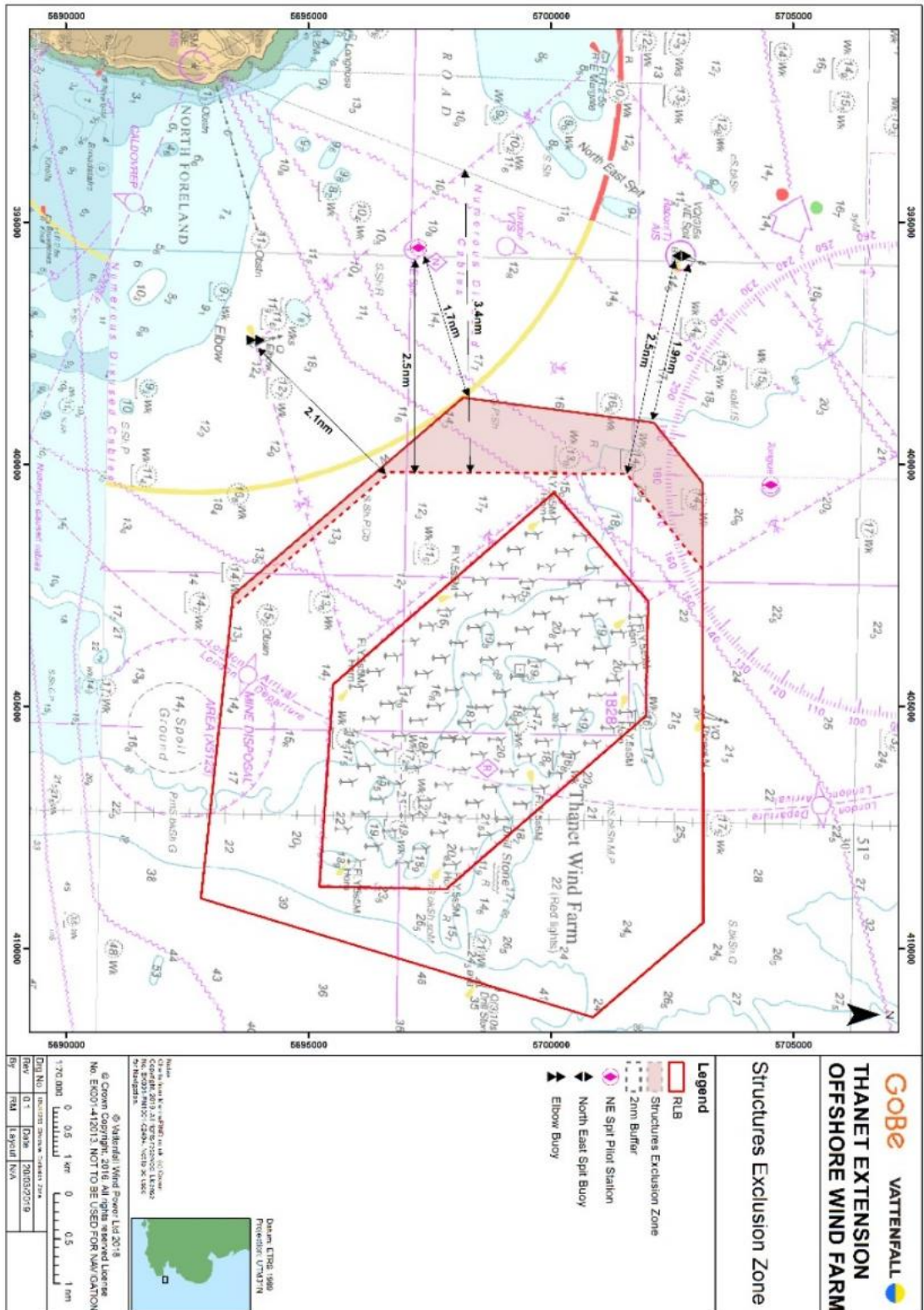
Figure 5.2.2: Key Commercial Shipping Routes Identified (2017)<sup>41 42</sup>



<sup>41</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>42</sup> From Figure 46 of the NRA [APP-089].

Figure 5.2.3: Plan Showing Proposed Structures Exclusion Zone<sup>43 44</sup>



<sup>43</sup> Note that Figure 5.2.3 is also reproduced in this Report at Figure 2.3. The Figures are identical but are duplicated to ensure that the reader has relevant illustrative material to hand.

<sup>44</sup> Reproduced from Applicant’s documentation: do not scale. Refer to original.

- 5.2.10. The most extensively used transfer location is the North East Spit PBD (see figure 5.2.1 above), which necessitates a 'dip-down' of vessels to the west of the existing Thanet OWF.
- 5.2.11. Pilot transfer at a PBD is between a pilot cutter (launch) and the vessel embarking or disembarking a pilot and requires the cutter to move alongside the vessel from or to which the transfer is taking place, which must be able to manoeuvre safely from and to the main estuary route to the north. There must be sufficient sea room for the safe completion of pilot boarding manoeuvres between individual vessels and pilot cutters, in all 'Metocean' conditions<sup>45</sup> where pilots remain on station and allowing for foreseeable difficulties such as problems with communications, boarding ladders, or encounters with other vessels. The Proposed Development as applied for would further constrain waters around the North East Spit PBD where the 'dip down' is performed, which has been optimised to allow sufficient sea room adjacent to the existing TOWF.
- 5.2.12. The expression 'the inshore route' used in the Examination and in this report refers to the area of sea to the west of the Proposed Development containing 'Route 4' shown in red in Figure 46 of the NRA [[APP-089](#)] (Figure 5.2.2 above). This is a route taken by vessels passing north east from the Channel to the Thames estuary, or south west from the Thames estuary passing to the Channel. It passes between the existing Thanet OWF and the shoreline and the site of the Proposed Development would reduce the extent of open water available to vessels using the inshore route.
- 5.2.13. Mid-way through the Examination, in response to IP and OP concerns about safety for shipping and navigation, a material change to the application was made in the form of the introduction of a Structures Exclusion Zone (SEZ). The purpose of the proposed SEZ is to safeguard additional sea room from OWF structures in waters relevant to vessels performing the dip down and/ or using the inshore route. The proposed order limits, together with the SEZ, extend to provide just under 4.5 nautical miles (nm.) or 8.5 km. from the North Foreland of the Kent coast, shown on the plan submitted as Figure 1 in [[REP4-018](#)] and reproduced as (Figure 5.2.3 above) in this report.
- 5.2.14. This section scrutinises the Navigation Risk Assessment (NRA) provided in support of the Proposed Development as a foundational input to the EIA and the application for Development Consent. It also scrutinises the Navigational Risk Assessment Addendum (NRA Addendum) carried out midway through the Examination supporting the introduction of the SEZ.
- 5.2.15. Crucial to the assessment of navigation risk is the meaning and application in policy of the term As Low As Reasonably Practicable (ALARP). This term is used throughout the Applicant's NRA and subsequent submissions to refer to a band of computed risk scores where

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<sup>45</sup> "Metocean" refers to the combined effect of the meteorological and oceanographic factors at play in a sea area, including local surface weather, winds and wind-generated waves, swell, surface and deep water currents

risk is assessed to be tolerable subject to mitigation. For reasons made clear in the consideration of policy below, the performance required of the Applicant in this case is to demonstrate that the siting, design and risk control and mitigation of the Proposed Development reduces to ALARP any increase in navigational risk over the pre-development baseline.

5.2.16. The ExA recognised early the crucial importance to this Examination of the contested set of issues concerning shipping and navigational safety and has given careful consideration to a very broad set of evidence from IPs and OPs, including large amounts of supporting detail. It has been necessary for the ExA in addressing evidence for – and counter to – the Applicant’s case, to focus on the important and relevant considerations necessary to support a decision by the SoS. Furthermore, because the positions of the Applicant, IPs and OPs evolved throughout the Examination, it has been necessary to address the most recent positions adopted incorporating the proposed SEZ. In the interests of presenting clear reasoning around very complex issues, the ExA’s citations of evidence below are limited to the important and relevant material and, unless otherwise explained, the most recent positions of the Applicant and relevant IPs and OPs.

5.2.17. This section sets out in order:

- policy considerations;
- the Applicant’s case;
- planning issues, summarising submissions by IP’s and OP’s;
- the ExA’s responses to these; and
- conclusions.

5.2.18. Each subsection discusses the effects of the Proposed Development on:

- sea room for safe navigation;
- shipping routes;
- pilot transfer operations; and
- ports and port operations.

## **Policy Considerations**

5.2.19. The overarching policy context for the DCO application is introduced in Chapter 3 of this Report above. Policy compliance is considered at a headline level in Chapter 4. This subsection discusses the important and relevant aspects of policy in relation to marine navigation, shipping and ports, considering submissions on policy matters raised by the Applicant and in relevant representations and submissions to Examination by IPs and OPs. Finally, the important and relevant issues arising are tested against policy in the ExA responses section towards the end of Section 5.2.

5.2.20. Section 4.5 of this Report frames the designated NPS policies that have effect for the purposes of s104(3) PA2008, in respect of which the application must be decided in accordance with, and those NPS policies which give rise to important and relevant considerations. NPS EN-3

Renewables is the designated NPS that applies to a wind generating station development. EN-3 taken together with the overarching National Policy Statement for Energy (EN-1), provides the primary basis for decisions by the Secretary of State on applications for renewable energy NSIPs. Relevant paragraphs are discussed in detail below. Underpinning these is Para 2.6.169 of NPS EN-3 which states: '*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.*'.

- 5.2.21. In addition to the NPSs, in accordance with section 104(2)(aa) of the Planning Act 2008 Section 4.6 of this Report identifies that the UK Marine Policy Statement (MPS) needs to be taken into consideration when determining the application. The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment and contributes to the achievement of sustainable development in the United Kingdom marine area. The South East Marine Plan covers the area in which the Proposed Development is situated but is still in early draft and at the time of Examination closure was not available to be considered by the ExA or the SoS.
- 5.2.22. The UK Marine Policy Statement (MPS) broadly sets out at paragraph 3.4.7 in respect of Ports and Shipping that: '*Increased competition for marine resources may affect the sea space available for the safe navigation of ships. Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety and ensure that their decisions are in compliance with international maritime law. Marine Plan development and individual decisions should also take account of environmental, social and economic effects and be in compliance with international maritime law. Marine plan authorities will also need to take account of the need to protect the efficiency and resilience of continuing port operations, as well as further port development.*'
- 5.2.23. The MPS is discussed at para 5.2.54 below in relation to '*minimising disruption or economic loss to shipping and navigation industries*'.
- 5.2.24. In the following subsections, the ExA addresses key policy themes arising from NPS EN-3:
- '*Establish stakeholder engagement with interested parties in the navigation sector*' (paragraph 2.6.153);
  - '*Unacceptable risks to navigational safety after mitigation*' (paragraph 2.6.147);
  - '*Interference with the use of sea lanes essential to international navigation*' (paragraph 2.6.161);
  - '*Avoiding or minimising disruption or economic loss to shipping and navigation industries*' (paragraph 2.6.162); and
  - '*Less strategically important routes important to the shipping and ports industry (and) their contribution to the UK economy*' (paragraph 2.6.163).

**'Establish stakeholder engagement with interested parties in the navigation sector' (NPS EN-3 paragraph 2.6.153):**

- 5.2.25. NPS EN-3, paragraph 2.6.153 states that: 'Applicants should establish stakeholder engagement with interested parties in the navigation sector early in the development phase of the proposed offshore wind farm and this should continue throughout the life of the development including during the construction, operation and decommissioning phases. Such engagement should be taken to ensure that solutions are sought that allow offshore wind farms and navigation uses of the sea to successfully co-exist.'
- 5.2.26. The ExA notes that in the EIA Scoping Opinion [[APP-130](#)] 3.97 *'The Applicant's attention is drawn to the specific comments from the Port of London Authority (Appendix 3 of this Opinion) that the NRA should take specific account of the impacts on pilot boarding and landing operations, the London Vessel Traffic Services (VTS) and provide further information as to the effects on shipping routes in the Thames Estuary. The comments of the Maritime and Coastguard Agency (MCA) and Trinity House also reflect these concerns and raise further points in relation to the reduction in the available "sea room" (between the WTG and the coast) at the south western edge and that further information will need to be presented as to how this could be mitigated.'*
- 5.2.27. The Applicant's submission [[REP1-086](#)] highlights comments from both TH and MCA (made as tracked changes in the appended minutes of a meeting in October 2018) which illustrate that substantial stakeholder disagreement had been raised during the preparation of the NRA and that the conclusions regarding risk remained contested at the time of the application.
- 5.2.28. At [[REP4C-014](#)] MCA confirmed that it: *'...remains concerned that there is no current agreement between the IPs and the applicant, and would be keen to see these discussions progress until such time as when agreement can be reached on whether the risk is deemed ALARP with appropriate mitigation. The MCA does have comments on the addendum NRA with regards to mitigation, as it is not clear in this document which mitigations are embedded and which are additional risk control options for the increase in risk.'*
- 5.2.29. In their Planning Policy Position Paper submitted as Annex 1 to [[REP3-070](#)] PoTLL and LGPL comment that: *'Neither POTLL nor LGPL were included in the statutory or non-statutory pre-application consultation process. The ports first became aware of the proposals following the application for development consent, having been alerted by the PLA. This is clearly a considerably deficient level of engagement and the Applicant's approach to stakeholder engagement is not in compliance with EN-3... PoTLL and LGPL note that the Applicant has engaged with the two ports since they have registered to participate in the examination. The two ports encourage such engagement and are prepared to work with the Applicant to ensure that their concerns are considered, assessed and mitigated.'*

- 5.2.30. The Ports made multiple submissions at each Examination deadline and participated in three issue specific hearings on Shipping and Navigation. They also commissioned and submitted an expert witness report by HR Wallingford [[REP4C-016](#)] on navigation aspects of the Proposed Development.
- 5.2.31. In their closing submission [[REP7-042](#)], LGPL/PoTLL states: *'Despite not having been consulted by the Applicant on its proposals for the offshore wind farm extension during the pre-application stage, the Ports have engaged diligently and thoroughly with the Application throughout its examination. The Ports have done so at considerable cost both financially and in terms of time, however they consider that their engagement has been necessary and hope that it has been of assistance to the ExA. As commercial entities operating on the Thames estuary, the Ports are primarily concerned with the considerable economic and commercial impacts which they consider could be caused if the offshore wind farm extension is consented. It is regrettable that with the end of the examination now upon us, there remain a number of areas of fundamental disagreement between the Applicant and the Ports. The Ports had hoped that through their engagement with the examination process, an acceptable compromise could be reached... Unfortunately, this is not the case...'*

**'Unacceptable risks to navigational safety after mitigation' (NPS EN-3 paragraph 2.6.147):**

- 5.2.32. NPS EN-3, paragraph 2.6.147 states: 'to ensure safety of shipping, it is Government policy that wind farms should not be consented where they would pose unacceptable risks to navigational safety after mitigation measures have been adopted'.
- 5.2.33. In their Planning Policy Position Paper submitted as Annex 1 to [[REP3-070](#)] PoTLL and LGPL contend that *'until navigational safety has: (1) been properly assessed; and (2) the scheme is appropriately mitigated so that it will not pose unacceptable risk to navigational safety, the scheme proposed is not consentable.'*
- 5.2.34. In their closing submission [[REP7-042](#)], LGPL/PoTLL states: *'The main overarching issue in respect of the Application which the Ports continue to object to is the inadequacy of the assessment of navigational safety and the resulting potential economic impacts on commercial vessels...'* The Ports' submission goes on to summarise areas where they consider the assessment to be deficient, one of which is a claimed lack of thorough assessment of the potential economic impacts of the Proposed Development, concluding: *'At present, it cannot be said that such information (i.e. the assessment of navigational safety and the resulting economic impacts on commercial vessels) is available and, as such, the environmental statement is considered deficient and not compliant with the EIA Regulations.'*
- 5.2.35. In [[REP7-042](#)], LGPL/PoTLL concludes: *'Much of the discussion during the course of the examination has centred on navigation risk and safety. The Ports wish to highlight that it is not only actual navigation risk which*



*could lead to economic impacts on the ports, but perceived navigational risk must also be considered given that the perception of risk amongst mariners, sea users and pilotage operators will ultimately lead to behavioural changes which could have economic consequences.'*

5.2.36. The following closing statements have been made at Deadline 6 by other IPs concerned with the safety of navigation:

- [REP6-087] from MCA: *'...the MCA is unable to agree that the proposed project is acceptable with regards to the safety of navigation...'*;
- [REP6-108] from Trinity House: *'...the NRAA [46] only identified a limited amount of general risks and we cannot categorically state that "all" risks to shipping and navigation have been reduced to ALARP as this concept also has a commercial element involved for the applicant.'*
- [REP6-097] from PLA/ESL: *'if the Order is made in the form currently proposed, the PLA and ESL will remain concerned about the safety of navigation and the continued viability of their operations to the west of the existing wind farm.'*

**'Interference with the use of sea lanes essential to international navigation' (NPS EN-3 paragraph 2.6.161):**

5.2.37. In its final position statement on policy matters [REP8-009], referring to NPS EN-3, the Applicant notes: *'paragraphs [sic] 2.6.161 advises as follows: "The IPC should not grant development consent in relation to the construction or extension of an offshore wind farm if it considers that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the development." The Applicant does not consider that this paragraph applies to consideration of this project.'*

5.2.38. The Applicant notes in [REP8-009] that the Energy Act 2004 Section 36B which added section 36B to the Electricity Act 1989 and sets out duties imposed on the MMO in relation to navigation when granting a consent under the 1989 Act: *'Section 36(1B) provides that the MMO (see section 36B(1A)) may not grant such a consent if it considers that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of offshore generating activities (section 36B(1)(a)). The definition of the "use of recognised sea lanes essential to international navigation" in the legislation reflects the definition used in paragraph 2.6.61 [sic] of EN-3.'* (The ExA notes that the Applicant in fact means to refer to NPS EN-3 para 2.6.161, not 2.6.61.)

5.2.39. The Applicant also notes that 'in circumstances where sea lanes must be designated and publicised if established in territorial waters, it is reasonable to assume that sea lanes essential to international navigation should be "recognised" with some formal procedure to this end. Indeed EN-3 paragraph 2.6.155 advises that "information on internationally

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<sup>46</sup> 'NRAA' is a reference to the NRA Addendum.

recognised sea lanes is publicly available"... The Applicant also considers it reasonable to assume that if a sea lane essential to international navigation is to be "recognised," it should be recognised as such by the IMO; and that this should be achieved by some formal publicised means, including through entries on navigational charts.'

- 5.2.40. The Applicant concludes that 'There is no suggestion by any party that the routes to the north and west of the proposed TEOW in particular, as assessed in the NRA, are designated or charted as any form of sea lane.'
- 5.2.41. In its D3 submission [[REP3-082](#)], MCA confirms: *'The area of concern is essentially "an area of sea" to the west of the existing Thanet Windfarm and is not a formally "designated" sea lane as such. However, that area of sea is actively used by all vessel types, including large commercial and international vessels. It is therefore considered an essential area for navigation and of strategic importance for vessel operation and accessing ports, with the SUNK TSS, an internationally recognised and established sea lane, in close proximity.'*
- 5.2.42. In its D5 submission MCA [[REP5-063](#)] argues that the *'...area of sea to the west of the existing Thanet windfarm...is not an IMO designated routing measure'* but goes on to state *'...in an operational sense, the area of sea should be treated as a recognized sea lane'*. The Applicant notes this representation by MCA but concludes, with reference to designation procedures in United Nations Convention on the Law of the Sea 1982 ("UNCLOS"): *'It might be possible in the future to designate a sea lane under Article 22, but this has not happened...'*
- 5.2.43. In their Planning Policy Position Paper submitted as Annex 1 to [[REP3-070](#)] PoTLL and LGPL contend in relation to understanding what is meant by a 'recognised sea lane' that: *'From a practical perspective and on a plain meaning reading of the phrase it is clear that given the volume of traffic passing through the inshore route, it could fall within this category. The vast ship numbers which pass through this route are outlined in more detail in section 3 of PoTLL and LGPL's Deadline 3 Representations Document2. Such ships transit from ports all over the world and we therefore consider that the policy test can be met and therefore the SoS should not grant development consent for the proposed development if he/she considers that interference with the use of the inshore route is likely to be caused by the development.'*
- 5.2.44. In [[REP4-032](#)] PoTLL/LGPL argue that even if the route between the array and the Kent coast is not currently a charted sea lane in accordance with IMO protocols, they contend that it has all the attributes to be considered as a sea lane and could be defined as such by MCA by instruction to the UKHO.

**'Avoiding or minimising disruption or economic loss to shipping and navigation industries' (NPS EN-3 paragraph 2.6.162)**

- 5.2.45. NPS EN-3 paragraph 2.6.162 sets out that: 'The IPC should be satisfied that the site selection has been made with a view to avoiding or minimising disruption or economic loss to the shipping and navigation

industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, lifeline ferries and recreational users of the sea. Where a proposed development is likely to affect major commercial navigation routes, for instance by causing appreciably longer transit times, the IPC should give these adverse effects substantial weight in its decision making...’.

- 5.2.46. With reference to EN-3 para 2.6.162, in their Planning Policy Position Paper submitted as Annex 1 to [\[REP3-070\]](#) PoTLL and LGPL comment at para 3.31 that: *‘EN-3 does not provide a definition of "major commercial navigation routes" however we consider (without prejudice to the position above that the inshore route can fall within the category of "recognised sea lane essential to international navigation") that it is clear that the inshore route in question is at the very least a major commercial navigation route. This is evidenced by the volume of traffic which passes through it as set out in more detail in section 3 of PoTLL and LGPL's Deadline 3 Representations Document<sup>3</sup> and as evidenced by the Port of London Authority's POLARIS (Port of London River Information System) database data and AIS data. As such, the SoS should give substantial weight to the adverse effects of the impact on the inshore route...’*
- 5.2.47. LGPL/PoTLL jointly made representations in [\[REP1-148\]](#) that the NPS for Ports (NPSP) should also be considered, because the Proposed Development location affected shipping, sea room, access to pilotage services for vessels entering and leaving the Thames estuary and hence the operation of London Ports. IPs and OPs agreed that the NPSP was not a designated NPS considered to have effect for decision-making purposes but that the relevant content of the NPSP should be an important and relevant consideration under PA2008 s104(2)(d). The ExA agrees with these submissions and has taken relevant NPSP policy into account for this purpose and in the planning balance (PA2008 s104(7)). Further evidence relating to this performance against this policy is referred to in the ports subsection below.
- 5.2.48. The D1 submission by LGPL/PoTLL section 4 [\[REP1-148\]](#) maintains that: *‘proposals are likely to result in significant impacts on commercial shipping, with resulting impacts on the efficient operation and thus competitiveness of their respective port and logistics facilities, contrary to the objectives of the Ports NPS and EN-3. Such impacts comprise the following components:*
- Increased journey distance and duration for certain types of vessels, and during certain sea conditions, resulting from a reduction in navigable width of the ‘inshore channel’
  - Reduced accessibility to the NE Spit pilot boarding station as a result of the reduction in navigable width of the inshore channel, and thus reliance on alternate routes/pilot boarding stations which may give rise to additional congestion and journey distance/duration (for ships and pilots)
  - Reduced resilience to adverse weather conditions and sea states as a result of the inability to utilise safely the NE Spit pilot boarding station by certain types of vessels.”

- 5.2.49. In [\[REP1-148\]](#) LGPL/PoTLL goes on to maintain that *'the IPs contend that it is of critical importance that the NRA and PTBSR provide a robust assessment of the potential implications of the proposed development on shipping and that such assessment informs further assessment of economic impacts on shipping and port activities. It is the IPs' view that such an economic assessment should be submitted by the Applicant as additional information to inform the application...The review of relevant policy and guidance in section 3 of this representation highlights the essential contribution UK ports, and in particular London ports, make to the national economy... POTL and DPWLG alone provided approximately 7% of total UK port capacity.'*
- 5.2.50. In [\[REP1-148\]](#) LGPL/PoTLL emphasises the significance of the need for resilience and the impact of adverse weather conditions and accidents: *'The Ports NPS also discusses the need for competition and the importance for UK ports to be competitive, both with each other and ports in continental Europe (Para 3.4.13) as a mechanism to drive efficiency and reduce supply chain costs. It also cites the need for resilience to account for "short term demand peaks, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties without causing economic disruption through impediment to the flow of imports and exports"'*.
- 5.2.51. In their Planning Policy Position Paper submitted as Annex 1 to [\[REP3-070\]](#) in response to the ExA's Rule 8 letter of 1<sup>st</sup> March 2019, LGPL/PoTLL argue that under PA2008 s104 (2)(d) the Secretary of State (SoS) *'can therefore have regard to the Ports NPS if it is considered to be relevant without it having to be a "relevant national policy statement" in accordance with s.104(2)(a)'*. The representation goes on to justify why consideration of the Ports NPS is important and relevant to the consideration of this application for a DCO. They go on to claim: *'Unfortunately, ports infrastructure appears to have been wilfully ignored by the Applicant as evidenced by its lack of engagement with major Thames Estuary ports in the DCO process and the absence of any assessment of economic impacts in the application documents.'*
- 5.2.52. In [\[REP3-070\]](#) LGPL/PoTLL argue that *'the necessary mitigation required in order to make the proposed development acceptable is a reduction in the RLB as set out in the Order Limits Plan submitted at Deadline 1 (Annex 4 to Appendix A of PoTLL and LGPL's Deadline 1 Written Representations [\[REP1-148\]](#).'* This was not accepted by the Applicant.
- 5.2.53. In [\[REP3-070\]](#) LGPL/PoTLL also submit: *'PoTLL and LGPL do not consider that "minimising disruption or economic loss to the shipping and navigation industries" is an area which the Applicant has fully considered or engaged with...The two ports consider that the additional step which needs to be taken is for a full economic assessment of the impacts of the proposed development to be carried out by the Applicant. Without such an assessment of economic impacts, the two ports contend that the ExA and SoS will be unable to consider the effect of the proposals on the South East and wider UK port competitiveness which is critical to the regional and national economy... As set out in PoTLL and LGPL's Written*

*Summary of Case made at ISH5 (submitted at Deadline 3) in section 4, the Applicant's assessment of the future baseline is particularly deficient.'*

- 5.2.54. In their Planning Policy Position Paper submitted as Annex 1 to [[REP3-070](#)], referring to 3.4.7 of the MPS, PoTLL and LGPL *'do not consider that the above points have been properly taken into consideration in the assessment of the impacts of the proposed development'*. PoTLL and LGPL make particular note of Policy PS3 in regard to future opportunity for expansion of ports which states that: *'Proposals should demonstrate, in order of preference: a) that they will not interfere with current activity and future opportunity for expansion of ports and harbours; b) how, if the proposal may interfere with current activity and future opportunities for expansion, they will minimise this; c) how, if the interference cannot be minimised, it will be mitigated; d) the case for proceeding if it is not possible to minimise or mitigate the interference'*. PoTLL/LGPL conclude: *'The efficiency and resilience of continuing port operations, as well as further port development, would be materially compromised by the TEOF, as currently applied for, if consented. This is not in accordance with the MPS policy.'*
- 5.2.55. It should be noted that this policy analysis remained disputed by the Applicant throughout the Examination. In its D8 policy submission [[REP8-009](#)] the Applicant stated that: *'even if the alleged nature of impacts advanced by the IPs is taken at face value, they could only be described as minimal, for the reasons already summarised above and explained more fully in Annex C of Appendix 16 to the Deadline 6 submission.'*
- 5.2.56. The ExA however notes that LGPL has extant consent to more than double its current waterfront infrastructure. PoTLL has now received Development Consent for the Tilbury 2 NSIP port development<sup>47</sup> that will also provide additional deep-water quayside berths. The ExA also notes the representations made by the Ports of the time-sensitive nature of some of the shipping that they serve, notably deliveries of fruit and other foodstuffs and 'Just-in-Time' supply chain deliveries as referred to in their [[REP7-042](#)] concluding statements, have the effect that even minor increases in steaming time can significantly affect the ability of larger vessels to access dredged berth pockets at ports via channels that can only be transited at certain states of tide.
- 5.2.57. In their representation at [[REP7-042](#)] in response to the Applicant's D6 submissions, LGPL/PoTLL note *'that the only assessment of economic effects submitted by the Applicant to inform the examination is that now provided as Annex C to Appendix 16 of the Deadline 6 submissions [[REP6-020](#)]. Therefore it is not clear what assessment gives rise to the Applicant's conclusion of "negligible impact", and the apparent attempts by the Applicant to distance itself from the conclusions provided within the submitted assessment seem perverse given that this is the only assessment which has been submitted in support of the application... The Ports consider that the Applicant's last minute attempt to provide economic assessment of the impacts of the proposed offshore wind farm*

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<sup>47</sup> See the made [Port of Tilbury \(Expansion\) Order 2019](#).

*extension is deficient, rushed and lacking in a number of areas. On that basis it is hard to conclude that the assessment has been carried out in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).'*

**'Less strategically important routes important to the shipping and ports industry (and) their contribution to the UK economy' (NPS EN-3 paragraph 2.6.163):**

- 5.2.58. NPS EN-3 paragraph 2.6.163 sets out that: 'Where a proposed offshore wind farm is likely to affect less strategically important shipping routes, a pragmatic approach should be employed by the IPC. For example, vessels usually tend to transit point to point routes between ports (regional, national and international). Many of these routes are important to the shipping and ports industry as is their contribution to the UK economy. In such circumstances the IPC should expect the applicant to minimise negative impacts to as low as reasonably practicable (ALARP)...'.
- 5.2.59. In its concluding position at Deadline 8 [REP8-003] the Applicant maintained the position that it has concluded through NRA and NRA Addendum that negative impacts to less strategically important shipping routes are minimised to As Low As Reasonably Practicable (ALARP).
- 5.2.60. In their Planning Policy Position Paper submitted as Annex 1 to [REP3-070] PoTLL and LGPL comment at para 3.34 that: '*PoTLL and LGPL do not consider the inshore route to be a "less strategically important shipping route" for the purpose of 2.6.163 for the reasons set out above. Indeed, if that was the view of PoTLL and LGPL (as well as the other Shipping IPs) then it is unlikely that the two ports would be so concerned as to raise this issue at examination. The onus on the Applicant therefore goes well beyond the requirement to minimise the impacts to as low as reasonably practicable...Generally, the NRA fails to take into account the policy tests applying to the SoS's decision-making powers, including those in EN-3. This is a further reason why that assessment included in the application for TEOWF is deficient and needs to be carried out again.'*
- 5.2.61. In relation to the question of what constitutes a 'less strategically important shipping route' and the standing of the routes into the Thames on which the Proposed Development has an impact, the ExA recognised the importance of the definition of importance of the 'inshore route'. NPS EN-3 paragraph 2.6.161 refers to the use of 'recognised sea lanes essential to international navigation' for the purposes of article 60(7) of UNCLOS. It was important for the Examination to confirm that navigable waters around the Proposed Development do not constitute such a sea lane or lanes, because if they did so, the PA2008 s 104(4) (international obligations) provision would apply. This is reviewed at paras 5.2.35 and following paragraphs above. The ExA sought oral submissions on this point at ISH2 and ISH5 and is satisfied from those submissions and subsequent written submissions from the MCA [REP3-082] and UK Chamber of Shipping [REP7-032] that the 'inshore route' and the route flanking the northern edge of the TOWF are not 'recognised sea lanes essential to international navigation'. This is not to downplay their

strategic relevance: they are critically important waters for the purposes of access to and egress from the Thames estuary; it is just that no formal designation of an international sea lane (such as the Dover Strait or Sunk TSS) has been made for these particular routes.

## **The Applicant's Case**

5.2.62. This section sets out the Applicant's case that:

- The Proposed Development would leave sufficient sea room for safe navigation with increased risks reduced to As Low As Reasonably Practicable (ALARP) as demonstrated by the Navigational Risk Assessment (NRA);
- The introduction of a Structures Exclusion Zone (SEZ) in response to representations by IPs would further mitigate risks to safe navigation, as demonstrated by the Navigational Risk Assessment Addendum (NRA Addendum).

5.2.63. The section is structured with the following subsections:

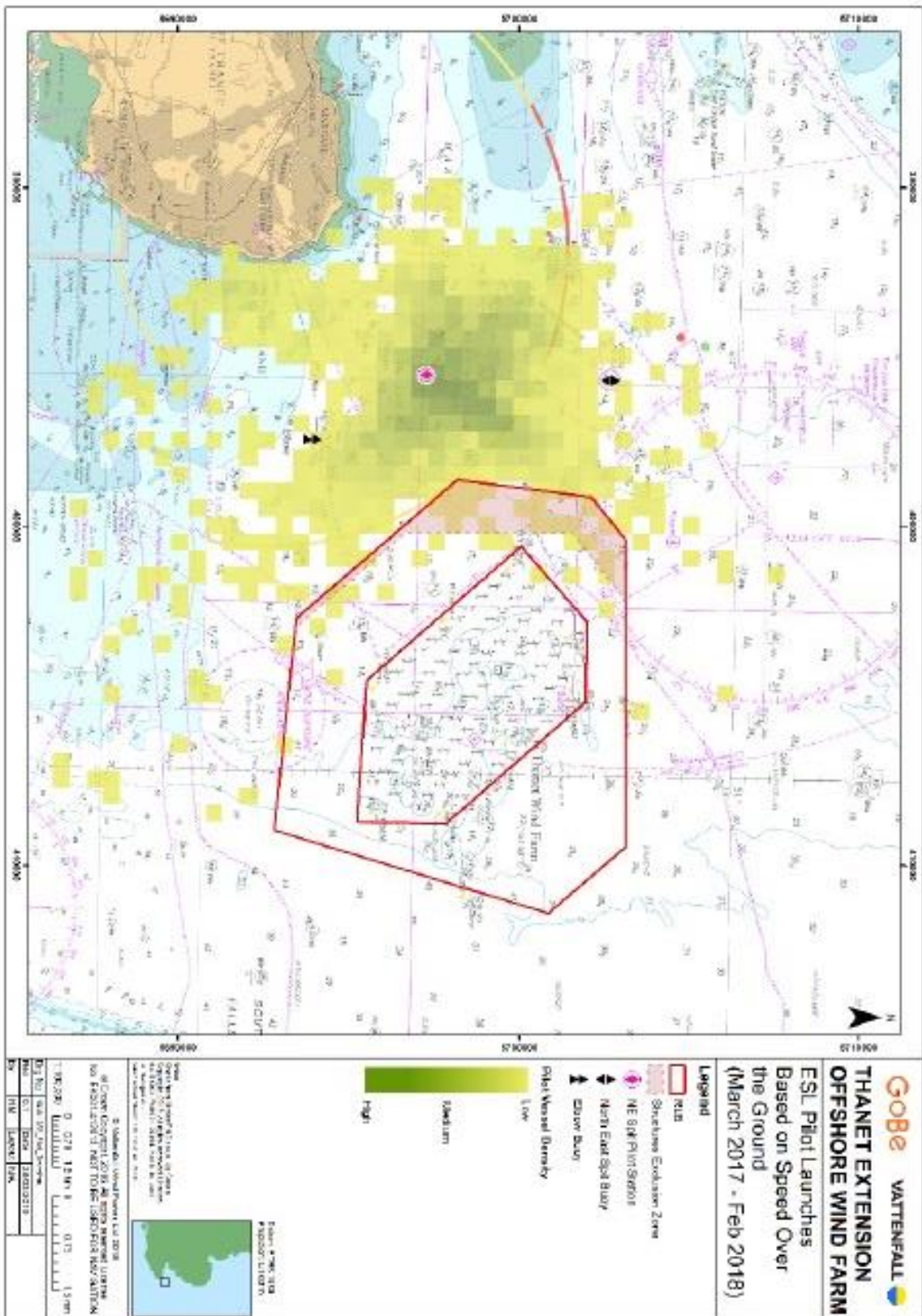
- Pilot transfer operations
- Sea Room for safe navigation
- Shipping routes
- Ports and port operations

### **Pilot transfer operations**

5.2.64. PLA and the Port of Sheerness provide essential pilot services to shipping into and out of the Thames estuary, mandatory for vessels over a certain size. Marine pilots are transferred from and to pilot launches at defined locations to the west, south and north-west of the existing wind farm. NE Spit Pilot Boarding Diamond (PBD) is predominantly used, due to its position in sheltered water close to the North Foreland. This PBD lies on the 'inshore route' that has historically been taken by vessels of less than about 11m draught as the shortest route from the south into the Thames and Medway; and also by vessels that normally 'dip-down' from east-west routes to transfer a pilot to avoid the inefficiencies of requiring the pilot launch to travel further to the north-west towards the Tongue deep water PBD.

5.2.65. As an input to the application NRA, the Applicant undertook a Pilot Transfer Bridge Simulation exercise reported in [[APP-090](#)] that concluded that pilot transfer operations would remain feasible with the Red-Line Boundary order limits. This is discussed further at para 5.2.77 below.

**Figure 5.2.4: Indicative Pilot Transfer Activity (Pilot Launch Density)<sup>48 49</sup>**



<sup>48</sup> Reproduced from Applicant’s documentation: do not scale. Refer to original.

<sup>49</sup> Fig. 3 of [REP4-018].



- 5.2.66. The Applicant concludes from analysis of AIS data shown in Fig. 5.2.4 above (Fig. 3 of [REP4-018]) that the large majority of pilot transfer operations (for vessels taking the inshore route or dipping down from the east-west route) take place in the sea area between the NE Spit Racon Buoy and the NE Spit PBD, with a very small minority taking place at the Tongue and NE Goodwin PBDs.
- 5.2.67. In its assessment of shipping commercial impact submitted as [REP6-020] two weeks before the close of the Examination the Applicant maintains that a limited number of pilot transfer operations currently take place within the limits of the Proposed Development that would be displaced but *'the Applicant's position is that this would not materially affect the overall pilot service in the area of the NE Spit'*.
- 5.2.68. In section 2.3 of [REP6-020] the Applicant also comments on D5 submissions by IPs regarding operations in periods when other pilot boarding locations serving the Thames and Medway ports are not in service due to adverse Metocean conditions noting *'residual concerns relate to the ability to operate in the area around Elbow Buoy (PLA/ESL), NE Spit Racon (LPC) and the effect of serving a greater number of vessels at a relocated Tongue DWD (PLA/ESL)'*. The Applicant argues that such effects would be to a small number of vessels over a short period of time and numbers of pilot transfers rendered unfeasible (primarily in the sheltered location at Elbow buoy between North Foreland and the Proposed Development) would be within the yearly variance of transfer numbers noted and therefore would have no commercial effect.
- 5.2.69. At para 31 and following paras of [REP6-020] the Applicant comments on submission by the London Pilots Council (LPC) [REP5-061] that the crucial area of sea to consider is between the NE Spit Racon Buoy and the Proposed Development SEZ. The Applicant considers the LPC proposition that increased numbers of large vessels would use this area to access pilot transfer services if North Edinburgh Channel or Fisherman's Gat channel are capital-dredged to supplement the number of deep-water access points into the Thames; the Applicant states that this proposition is *'not viewed to be a valid proposal at this time'* as such dredging is merely under consideration by the authorities but no formal project has yet been brought forward for Environmental Assessment or consent.
- 5.2.70. In [REP6-020] the Applicant notes that *'LPC specifically refer to the difficulty of boarding large ... vessels in this area'*, assuming that *'vessels of this size that would otherwise have boarded in this area would no longer be able to and would be served elsewhere, presumably at Tongue DWD. As such, the consideration of the commercial effect on the pilot operation focuses on the displacement of certain types of vessels to a location further north, with the associated impacts on cost, time and availability.'* The Applicant argues at para 35 that the survey data shows that there are no records of Ultra Large Container Ships (over 366m. LOA) and vessels over 12.5m. draught are *'vanishingly rare'*, therefore *'there would appear to be virtually no effect on pilot transfers involving these deep draught, large vessels in the area between NE spit racon and*

*the SEZ, and therefore no consequential adverse commercial or economic effect’.*

- 5.2.71. At para. 160-161 of the NRA Addendum [[REP4B-002](#)] the Applicant notes that a potential risk control that has not been adopted is the relocation of the NE Spit pilot boarding area. The Applicant concludes at para 60 of [[REP8-003](#)] that *‘Pilot transfers would continue to be able to be undertaken in the same manner and in largely the same area as at present’* and because the introduction of the SEZ would reduce the impact of Proposed Development on sea room for pilot transfers, relocation of the NE Spit pilot boarding area is not warranted.
- 5.2.72. However, the Applicant also concludes in [[REP8-003](#)] that depending on final turbine layout, the Proposed Development *‘...may require the relocation of the Tongue Pilot Boarding Diamond slightly further north...’*.
- 5.2.73. At para 40 and following paras of [[REP6-020](#)], the Applicant reviews evidence submitted by IPs that masters of larger vessels over about 240m.LOA may choose to divert around the Proposed Development due to concerns over safety of the residual sea room of the inshore route. The Applicant assesses that this may affect a precautionary figure of 132 vessels annually based on 2018 survey data; however, *‘(I)n the highly unlikely event that 132 vessels be served at the Tongue DWD this would have potential commercial effects on ESL and the commercial operators. In terms of the vessels, it is probable that this would be a net benefit against “dipping down” to be served at the NE Spit diamond area. This act of “dipping down” leads to approximately an additional 4nm of steaming distance and time which would not be required if being served north of the wind farm’*.
- 5.2.74. At para 45 and following paras of [[REP6-020](#)] the Applicant reviews claims made by IPs that an effect of the Proposed Development would be to reduce the resilience of pilot service with consequential direct and indirect effects to shipping and port operations. The Applicant infers from the service records submitted to Examination by ESL that *‘restricted service’* at NE Spit is *‘associated with no pilot transfers at Tongue DWD as a minimum, with occasional additional restrictions as discussed in assessing the impact at Elbow buoy’* in Section 2.3 of [[REP6-020](#)]. The Applicant concludes that *‘whether total transfers as considered here, or total pilotage days as considered in Annex A are considered, the overall impact on pilotage operations is less than 1% of operations may be subject to some form of impact under a worst case scenario.’*
- 5.2.75. Following challenge at D7 by IPs that earlier animations of vessel tracks submitted by the Applicant were not representative of the busiest time for pilotage and had too short a duration of analysis, the Applicant submitted as [[REP8-008](#)] an additional animation for the busiest 24 hour period for vessels over 90m. LOA from the AIS dataset available to it (20<sup>th</sup> Feb 2018). The Applicant commentary in their submission [[REP8-007](#)] is that even on this busiest day, pilot transfer operations are concentrated around the NE Spit PBD; and there was only one double

pilot transfer *'which was conducted well clear of the SEZ and in plenty of sea room'*. All inbound and outbound vessels used the Princes Channel.

### **Sea room for safe navigation**

- 5.2.76. As required by NPS EN-3 paragraph 2.6.156, the Applicant carried out a Navigation Risk Assessment (NRA) [APP-089], scoped in accordance with MCA's Marine Guidance Note MGN543. The Applicant also submitted a completed checklist on MGN543 compliance [REP2-030].
- 5.2.77. ES Chapter 10 'Shipping and Navigation' [APP-051] summarises the output of the NRA and assesses the impacts of the Proposed Development on Shipping and Navigation and *'possible mitigation measures that should be implemented to reduce those impacts'*. This ES Chapter 10 also summarises the output of a Pilotage Study and Pilot Transfer Bridge Simulation (PTBS) [APP-090] as an important component input to the NRA. Para 1.1 of the PTBS Report [APP-090] describes its objectives, including: *'Understand/inform the change in encounters and collision risk due to reduced sea room of the proposed layout. This will primarily be investigated by quantitative assessment using traffic flow modelling that is planned to be utilised within the EIA phase of works.'*
- 5.2.78. At [APP-051] 10.11.4 the ES notes (in relation to assessment of marine navigation collision risk): *'Collision risk modelling was undertaken to assess the relative change in collision risk as a result of the extension. The assessment found that the historical incident rate is for one collision every 6 years within 5 M of the development. As a result of the extension this was modelled to increase by 54% to once every 4 years, without additional mitigation'*. On the face of it, and on a common-sense reading, the baseline risk at once every 6 years seems to the ExA already *'reasonably probable that it will occur during the project'* as defined in ES Table 10.3 and therefore should be rated as a 'Probable' likelihood, 6 years being much less than the project lifetime.
- 5.2.79. The ES Chapter 10 [APP-051] concludes at 10.8.3: *'The assessment concludes that the extension would heighten the risks to navigation in the southern Thames Estuary. These risks of collision and contact with the WTGs, whilst heightened, are considered to fall within "As Low As Reasonably Practicable". Whilst pilotage operations at NE Spit may become more operationally challenging, it is concluded that they will remain feasible. To further mitigate these impacts, the project has reduced the footprint of the RLB to the west, and therefore additional controls which have been considered are not deemed necessary to manage the risks to ALARP.'*
- 5.2.80. In [REP1-024], commenting on responses to ExA's first Written Question 1.12.28 about RYA's concern that the Proposed Development may cause *'...echoes on radar which requires users to reduce gain, thereby losing smaller targets (i.e. small boats)...'*, the Applicant referred to section 7.9 of the NRA and commented: *'The concerns raised by the RYA in consultation on reflections and radar echo were noted albeit no evidence has been made available to suggest extant issues or effects as described with the existing wind farm...The assessment concluded that the*

*extension of the wind farm will not adversely affect the use of radar for collision avoidance and therefore assessed impacts as likely and negligible and minor in significance. Consequently, no mitigation for effects on radar are [sic] proposed.'*

- 5.2.81. On 27 Feb 2019, responding to the IP and OP submissions at ISH2 and ISH5, the Applicant conducted a stakeholder workshop to explore criteria for safe sea room in the vicinity of the Proposed Development. [REP4-018] discusses the interpretation made by the Applicant of the stakeholder requirements for safe sea room for pilot transfers and for transit passage respectively, taking as a revised worst case the passage of four 333m. LOA vessels to allow for future growth of large vessel traffic, noting at para 171 of [REP4B-002] *'that only a single vessel of this size has transited the inshore route'*.
- 5.2.82. Following this stakeholder workshop on 27 Feb 2019 the Applicant introduced a Structures Exclusion Zone (SEZ) as a material change at Deadline 4 at the end of March 2019.
- 5.2.83. Following the introduction of the SEZ the Applicant's consultant (Marico) conducted on 29 March 2019 a risk assessment ('HAZID') workshop with stakeholders at which the top hazards were identified and input risk likelihood and consequence scores for 4 of these were established by consensus
- 5.2.84. Subsequent to the hazard workshop held with stakeholders on 29 March 2019 the Applicant proceeded to assess scores for a further 14 hazards and to compute quantitative risk levels using their proprietary software, as input to the NRA Addendum [REP4B-002] submitted to Deadline 4B on 05 April 2019.
- 5.2.85. Subsequently an interim outline draft Navigation Risk Assessment Addendum (NRA Addendum) [REP4-035] was submitted as an accepted as a late submission to Deadline 4 and was substituted by a final NRA Addendum [REP4B-002] submitted to Deadline 4B on 05 April 2019.
- 5.2.86. Immediately following the hazard workshop, one of the stakeholders had made the case by email that for the top 3 Hazards the Most Likely Stakeholder consequence of the Hazard should be increased to a higher value; the Applicant noted at para. 153 of [REP4B-002] that whilst this increase was not reflected in the scoring reported in the NRA Addendum, sensitivity testing showed that if the scores were re-computed baseline/inherent risk scores would rise only to 4.53, 4.52 and 4.53 respectively, therefore still within the ALARP range defined in the NRA.
- 5.2.87. The Applicant's NRA Addendum [REP4B-002] concluded at para. 154 that while residual risk scoring was not undertaken for the Addendum hazards, the risk levels with mitigation (which would *'...mostly relate to monitoring and refinement of existing measures, rather than extensive and expensive risk control measures'*) would all remain in the ALARP range.

- 5.2.88. The Applicant also concludes at para. 164 and 177 of the NRA Addendum [[REP4B-002](#)] that *'the most significant hazards increase with the introduction of the proposed project'* but following the introduction of the SEZ *'the overall magnitude of impact has been reduced when compared to'* the application NRA that forms part of the Environmental Statement.
- 5.2.89. In section 6.2 of the NRA Addendum [[REP4B-002](#)], the Applicant recommends the adoption of the following risk control measures to reduce inherent risks of the Proposed Development further within the ALARP range:
- promulgation of information;
  - instigation of a Shipping and Navigation Liaison Plan/Group;
  - optimisation of line of orientation and symmetry and review of Aids to Navigation/Buoyage.
- 5.2.90. The Applicant also recommends at para. 164 of the NRA Addendum [[REP4B-002](#)] that in order to validate risk controls and *'...to mitigate any increase in risk specifically for large vessels utilising the North East Spit for pilot transfer, consideration should be given on the basis of the final design of the project to undertaking a full bridge simulation study.'*
- 5.2.91. In addressing the London Pilots Council (LPC) submission at [[REP5-061](#)] that the crucial area of sea to consider is between the NE Spit Racon Buoy and the Proposed Development SEZ, [discussed at para 5.2.171 below] and that additional hazard would be presented by interference of the Proposed Development with the ability to see smaller targets either by eye or on ship-borne radar, the Applicant comments in [[REP5-012](#)] as follows: *'It is the Applicant's position that there would be no significant interference with visibility or lines of sight as a result of the extension. With the project in place there would be a slight change in manoeuvres in that a vessel routing through the north west corner of the wind farm (transiting to/from the Margate Roads Anchorage or when dipping to transfer a Pilot at North East Spit Pilot Boarding Station) would make this turn slightly further to the west than it currently does but there would remain ample sea room for the necessary manoeuvres to be performed. The application of guidance (from MGN543 and the MSP) in determining the sea room between the North East Spit Racon Buoy and the SEZ for this turn (on a precautionary basis of concurrent transits of four 333m LOA vessels and allowing for vessels turning) ensures that adequate sea room is maintained for continued transits and that this turning procedure remains acceptable. Furthermore whilst a clear line of sight is desirable it is not essential. It should be highlighted that the new wind turbines will be larger but spaced further apart. Therefore, the line of sight visually and by radar would be better than that currently experienced with the various wind farms in the Thames Estuary.'*
- 5.2.92. Late in the Examination the Applicant submitted [as annex to [REP6-064](#)] a 'Collision Assessment of Proposed Extension', undertaken by a new, independent consultant (Anatec) on the same (SEZ) study area applied to the NRA Addendum, using different inputs and modelling software to the HAZMAN proprietary software used by Marico in the original NRA. The Applicant's introduction states: *'this additional CRM does not, and was*

*not intended, to directly correlate with the original CRM undertaken by Marico. As such, the quantum of collision return rates and the change associated with the introduction of TEOW differs.'* Although this was subsequent to and therefore not considered in the NRA Addendum, the Applicant concluded at para. 65 of [REP8-003] that it provided additional quantitative evidence that the increase in risk from the TEOW would be minimal.

- 5.2.93. At para 67 of [REP8-003] the Applicant references final submissions by IPs including MCA [REP6-087] and the Ports, PoTLL/LGPL [REP7-042] that the acceptability of project risk should be *'based on the level of agreement between stakeholders'* but concludes that *'whilst qualitative 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.'*
- 5.2.94. The Applicant has maintained throughout its NRA and NRA Addendum that an assessment of future baseline traffic growth of 10% over the project lifetime of the Proposed Development is conservative. (This conclusion was discussed in detail in a dedicated paper at [REP7-026] and again in para. 51 of its final position statement at [REP8-003].)
- 5.2.95. The Applicant maintains that as existing density of ship traffic through the inshore route is relatively low, the Proposed Development would not have significant traffic congestion effects.

### **Shipping routes**

- 5.2.96. Shipping routes pass around all sides of the existing wind farm, mostly to and from ports in the Thames and the Medway and the Margate Roads and Tongue anchorages, shown as *'approximate fairway'* in Fig. 5.2.5 (Figure 56 of the Navigation Risk Assessment (NRA) [APP-089]) below.
- 5.2.97. The Applicant maintains that the shipping routes passing to north and west of the Proposed Development are not subject to the definition of a *'recognised sea lane essential to international navigation'* in relation to the relevant NPS.
- 5.2.98. Official charts of the area of sea immediately to west and north of the Proposed Development do not figure a recognised sea lane; see the stylised diagram captioned *'Figure 11: Key shipping routes near to development'* in the NRA [APP-089], reproduced as Fig. 5.2.6 below.
- 5.2.99. In [REP8-003] *'Applicant's final position on outstanding matters'* the Applicant noted that this area of sea within which the inshore route lies was characterised by Trinity House during the Examination as an *'area of general navigation'*.

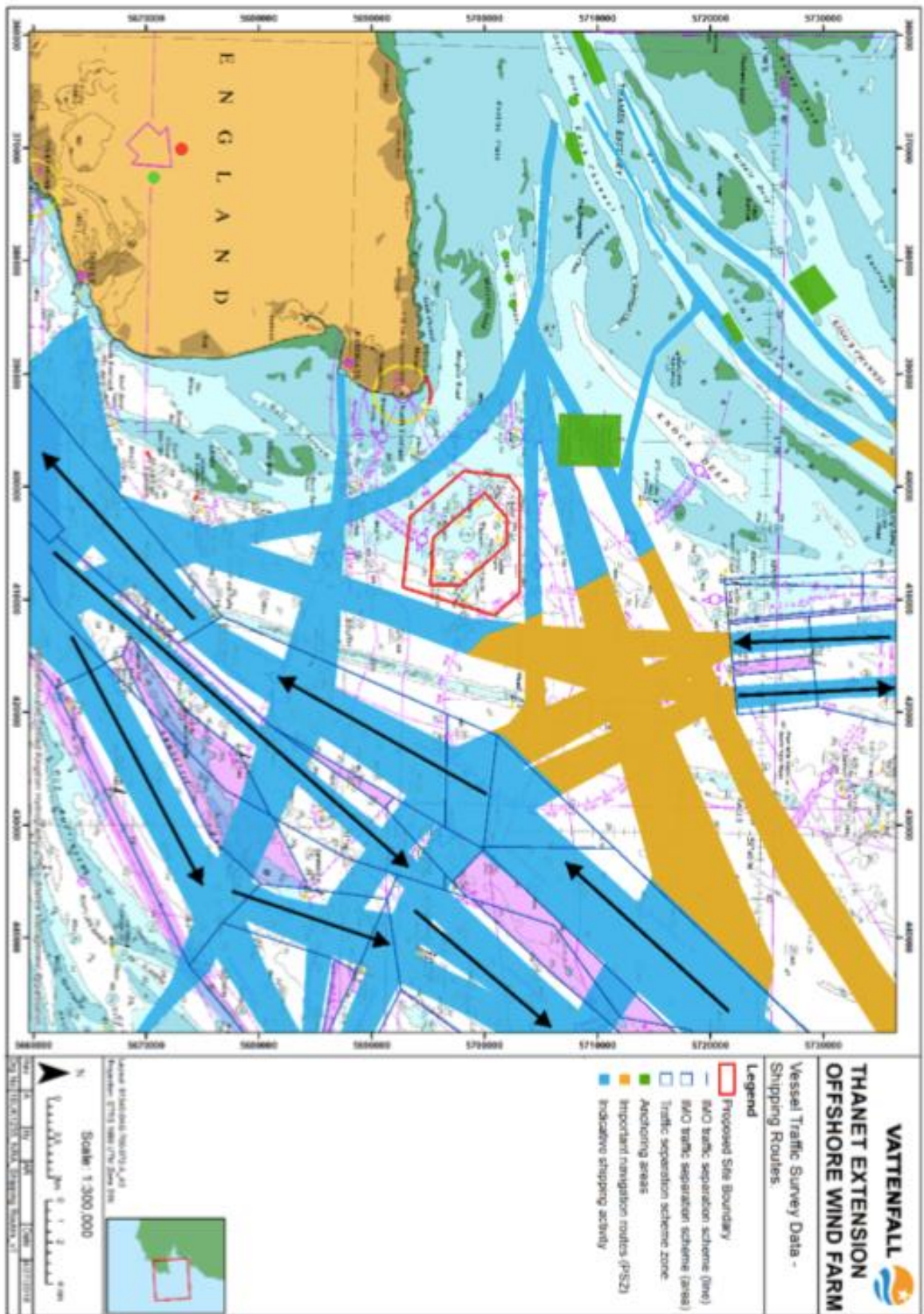
**Figure 5.2.5: Approximate Fairway with >8m Chart Datum (avoiding anchorages, vessel tracks for >90m LOA excluding dredgers)<sup>50 51</sup>**



<sup>50</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>51</sup> NRA Figure 56 [[APP-089](#)]

Figure 5.2.6: Key Shipping Routes near to the Proposed Development<sup>52 53</sup>

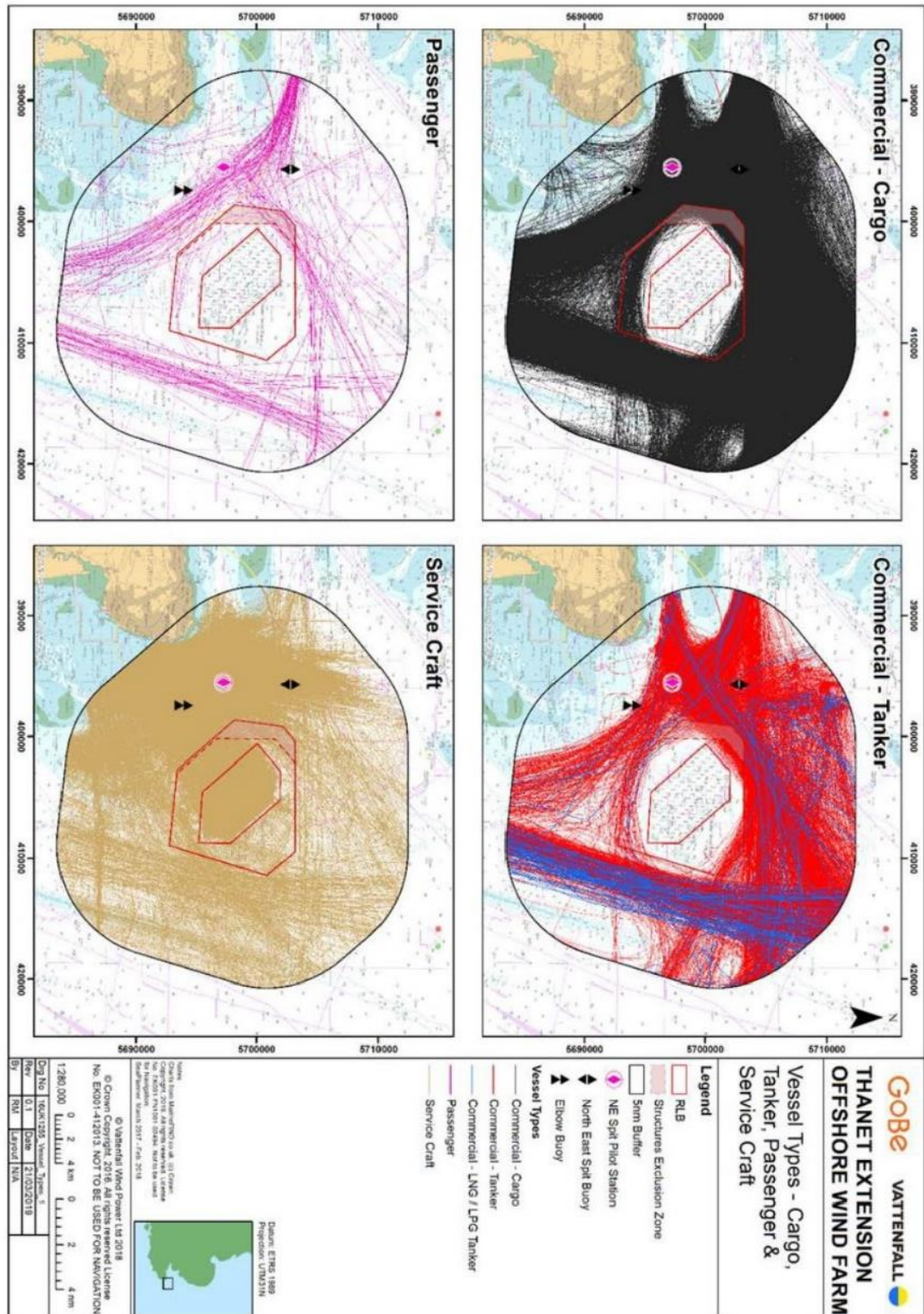


<sup>52</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>53</sup> NRA Figure 11 [[APP-089](#)]



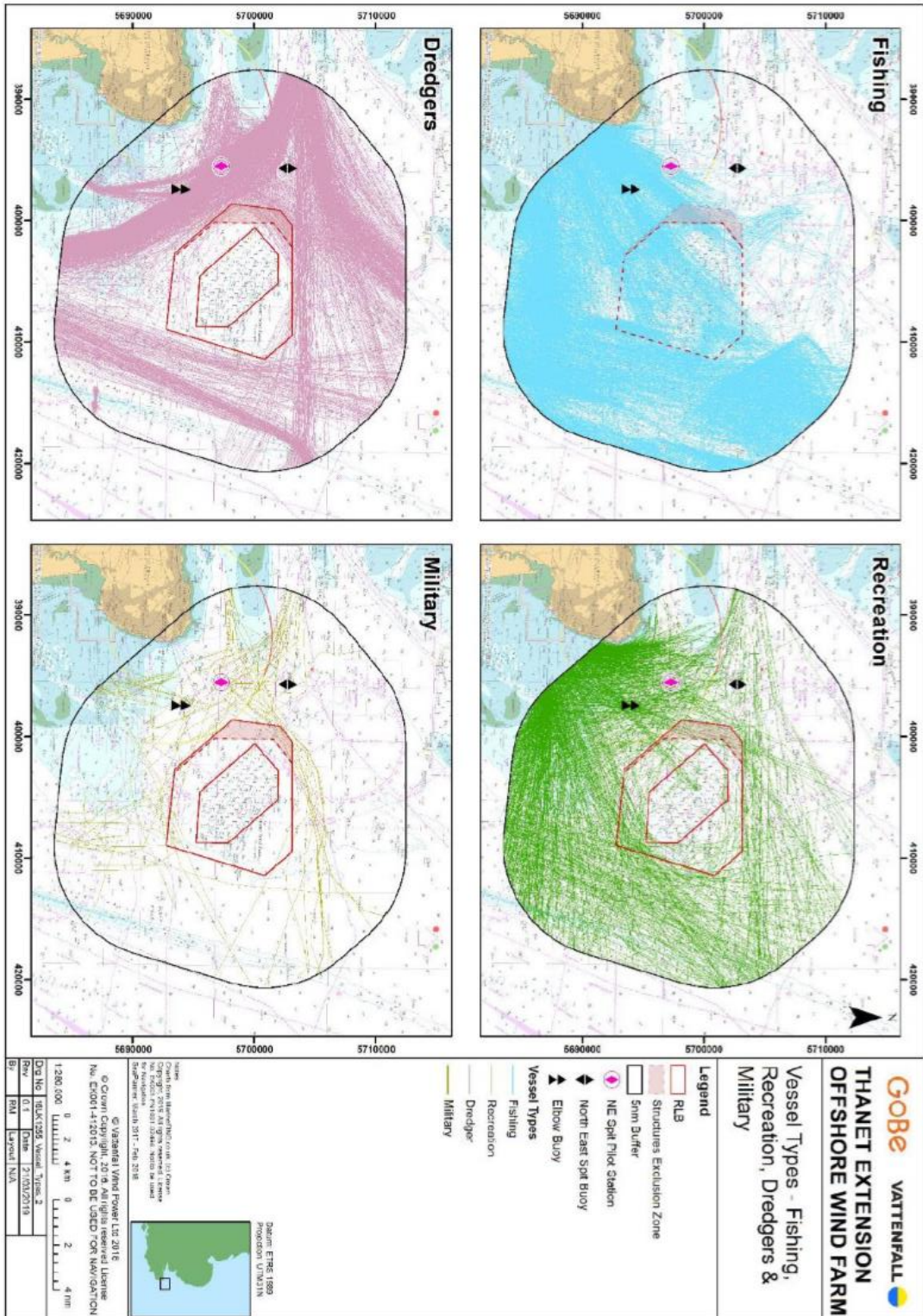
**Figure 5.2.7: Tracks by Vessel Type  
(Commercial Cargo & Tanker, Passenger, Service Craft)<sup>54 55</sup>**



<sup>54</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>55</sup> NRA Addendum Figure 6 [REP4B-002]

**Figure 5.2.8: Tracks by Vessel Type (Fishing, Recreation, Dredging & Military)**<sup>56 57</sup>



<sup>56</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.  
<sup>57</sup> NRA Addendum Figure 7 [REP4B-002]

- 5.2.100. In [REP6-026] affirms: *'The Applicant maintains that re-routing is not necessary as adequate searoom remains to allow safe passage through the inshore route...Given the Applicant maintains that no diversion is necessary for vessels in the range 240-333m, beyond deviations that would be undertaken under normal circumstances, there will be no significant environmental, commercial or economic effect associated with it.'*
- 5.2.101. At [REP6-020] para 55 the Applicant stated that *'[i]f any vessel chose to deviate around the wind farm and not use the inshore route as a result of TEOW (which the Applicant does not consider necessary) it is the Applicant's position that this would lead to an 11nm diversion.'* The Applicant also maintains that any economic impacts of vessels choosing to divert around the Proposed Development would add at most about an hour's extra steaming time and that this would be negligible in overall passage plans and not significant in EIA terms.
- 5.2.102. In its final position at para 62 of [REP8-003] *'...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'.*
- 5.2.103. Traffic surveys reported in the NRA and illustrated in, for example, Fig. 46 of [APP-089] show that a large proportion of ships arriving from or departing to the east of the TOWF 'dip-down' to the North East Spit PBD to transfer pilots. The Applicant maintains that following the introduction of the SEZ the area of sea through which this dip-down traffic passes, between the Proposed Development and the North East Spit Racon buoy, would be sufficient for four 333m. LOA vessels to pass and that the Proposed Development, assessed on a precautionary basis, would present no significant obstacle to the dip-down manoeuvre and no significant deviation or delay would result to ship transit.
- 5.2.104. NRA Addendum [REP4B-002] Figure 6 (see Figure 5.2.7 above) shows vessel tracks in the vicinity of the TOWF presented by type of vessel and identified from analysis of one year's Automatic Identification System (AIS) data. Most movements tracked were either commercial cargo vessels or wind farm service vessels (WFSVs).
- 5.2.105. NRA Addendum [REP4B-002] Figure 7 (see Figure 5.2.8 above) shows AIS tracks for fishing, recreational and military vessels, it being noted that this latter set of vessels do not always have AIS transceivers in operation.

### **Ports and port operations**

- 5.2.106. In section 3.3 of [REP6-020] the Applicant assesses the precautionary approach of assuming that (due to effects of the Proposed Development) *'no vessel over 250m would transit the inshore route (as assumed by PoTLL / DWPLG), this would equate to 54 vessels'.* The Applicant argues that *'(T)he impact on commercial vessels must take into account the relative additional time and the cost of this deviation in relation (to) the Port of London total vessel arrivals.'* The Applicant concludes that *'...the*

*commercial effect is very small when considering the overall traffic transiting to and from the Port of London' and '...it is considered highly unlikely that vessels would choose alternative ports on the basis of an additional 1 hour steaming time.'*

- 5.2.107. At para 67 and following paragraphs of [REP6-020] the Applicant considers in-combination effects suggested by IPs, notably '*...that as a result of imposition of the wind farm, vessels will ultimately choose another port, thereby reducing port arrivals and ultimately economic loss and reduced employment (which could be considered wider societal effects).*' The in-combination effects noted are Additional pilotage costs; loss of resilience and costs of diversion around the wind farm.
- 5.2.108. The Applicant argues that pilot transfers at NE Spit account for less than 50% of all pilot operations for the Port of London; therefore the effect of any loss of resilience where pilot transfers in certain adverse Metocean conditions are currently only feasible in the sheltered sea room off the North Foreland would be in the order of 0.25% all Port of London pilot transfers annually; the effect of the Proposed Development '*on the total operability and attractiveness of the Port of London is considered to be immaterial and highly unlikely to influence the decision of vessel operators over considerations such as available berths, port fees and proximity to the end customer*'.

## **Planning Issues**

- 5.2.109. This section summarises the positions of the following Interested Parties and Other Persons (IPs and OPs):
- the Maritime and Coastguard Agency (MCA) and
  - Trinity House (TH);
  - London Pilots Council (LPC);
  - Port of London Authority (PLA) and Estuary Services Ltd (ESL);
  - UK Chamber of Shipping (UKCoS);
  - Port of Sheerness (PoS) and
  - London Gateway Port (LGPL); plus
  - Port of Tilbury (PoTLL) as Other Person (OP).
- 5.2.110. The Maritime and Coastguard Agency (MCA) has statutory authority over shipping and navigation in the area of sea in which the application is located. Its RR [RR-050] submitted in summary that '*MCA does not accept that the increase in [navigation] risk is tolerable with the current proposed redline boundary...*'.
- 5.2.111. Additionally, MCA submitted an RR on behalf of the Sunk User Group [RR-051]. This is a local stakeholder forum chaired by MCA and including representatives of HM Coast Guard (HMCG) and the national Vessel Traffic Services Policy Steering Group. The RR included the comment: '*[t]his Forum concluded at its meeting on 25th July 2018 that the significant concerns raised by its stakeholders remain, despite the mitigation proposed in the Navigation Risk Assessment (NRA) and the reduction in the red line boundary.*' The Sunk User Group's participation in the Examination was combined under the MCA's representation. Their

concerns were reinforced in detail by MCA's submission [[REP2-041](#)] referring to extensive feedback from MCA's stakeholder forums including the SUNK VTS User Group (local stakeholders), VTS Policy Steering Group (national Vessel Traffic Services (VTS) stakeholders) and the UK Safety of Navigation (UKSON) Committee (national Safety of Navigation stakeholders).

- 5.2.112. Trinity House (TH)<sup>58</sup> is the General Lighthouse Authority for England, Wales, the Channel Islands and Gibraltar, with powers principally derived from the Merchant Shipping Act 1995 (as amended) with the primary purpose of providing aids to navigation for the safety of shipping and all mariners. TH submitted in [[RR-039](#)] *'that the development would create an unacceptable increase in risk to the safety and navigation of mariners at sea, therefore we OBJECT to the proposed red line boundary (as revised) within the plans.'* TH subsequently participated actively throughout the Examination.
- 5.2.113. The Port of London Authority (PLA) is the statutory port and harbour authority for the tidal River Thames, and in its Relevant Representation [[RR-054](#)] objected to the Proposed Development, noting that although the application site lies outside its statutory limits, it *'... is concerned about the proposals to extend the existing Thanet Offshore Wind Farm, which is located in the Thames Estuary in the approaches to the Port, due to their potential impact on the safety of maritime operations in one of the busiest parts of UK coastal waters.'* The PLA identifies that the Proposed Development is *'... in close proximity to the PLA's pilot boarding locations, with that at the North East Spit most affected, and, moreover, the proposals have the potential to impact on the operation of the Port. The proposals would encroach into the existing shipping lanes, lengthening journey times into the Port for commercial services that would have to re-route around an extended wind farm.'*
- 5.2.114. The PLA summarised in [[RR-054](#)] its concerns about the Proposed Development as follows: *'The existing wind farm already presents challenges to pilot operations, especially during busy times and strong winds, causing delays to vessel arrivals within the Port; these challenges would be exacerbated by the proposed extension. The PLA considers that any extension to the west of the existing wind farm will increase significantly the risks to navigation for all types of vessels, especially those using the North East Spit Pilot Boarding and Landing Area to enter or depart the Thames Estuary. The proposals would force more vessels to use the outer Tongue Pilot boarding station, which would itself be pushed further from the shore, adding significant costs to the service by lengthening the pilotage act, necessitating additional vessels, fuel and crews. This would also make the Port less resilient in bad weather, as pilots would be less able to board in heavy seas.'*
- 5.2.115. PLA participated extensively in the Examination both on its own behalf and in combination with Estuary Services Ltd (ESL), its co-owned pilot launch service [[RR-044](#)] which is co-owned by Port of London Authority

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<sup>58</sup> The Corporation of Trinity House of Deptford Strond.

and Port of Sheerness and operates in the waters surrounding the Proposed Development out of Ramsgate and Sheerness.

- 5.2.116. The Port of Sheerness Limited [[RR-011](#)] is a part of the composite Medway Ports group (a subsidiary of Peel Ports) and is the statutory harbour authority for the Medway estuary that is accessed via the outer Thames estuary. The Medway Ports group did not participate in hearings independently of its co-owned subsidiary pilot launch service Estuary Services Limited (ESL). The Port of Sheerness representation [[RR-011](#)] summarises its concerns as follows: *'Our principle [sic] concerns are the significant disruption to our operations due to encroachment into existing shipping lanes and their well established shipping routes, necessitating considerable re-routing of traffic and potential loss of well established trade; the reduction of sea room and potential interference with marine navigational equipment causing an impact on navigational safety; the impact of additional transit time on the wear and tear of pilot launches and their suitability to undertake the revised passage.'*
- 5.2.117. In [[RR-009](#)] the UK Chamber of Shipping, the primary trade association and representative body of the UK shipping industry, stated: *'Despite recent alterations to the red line boundary of the proposed extension, the Chamber has significant navigational safety concerns around the western extent and does not consider the NRA to have sufficiently considered the impact upon vessel traffic and operations nor offered suitable mitigation measures. Having reviewed the NRA and its references to the impact on Vessel Traffic Routeing as being "minor" the Chamber would take a strongly opposing view ... The Chamber, having consulted with other groupings, does not believe the NRA has sufficient detail or reflects true operations in real life conditions.'*
- 5.2.118. The London Pilots Council (LPC), which represents active maritime pilots serving the Port of London, was an IP [[RR-002](#)] that participated actively in the Examination without legal representation, concerned with safety of navigation for *'vessels boarding and landing Marine Pilots and transiting the North East Spit area.'* The LPC is affiliated with the United Kingdom Maritime Pilots' Association (UKMPA) which in a separate relevant representation [[RR-003](#)] submitted that: *'The proposal will have a direct impact not only on ships' manoeuvring room but more importantly the increased undesirable effect on the potentially life threatening elements of already (globally recognised) generally hazardous but essential pilot boarding and landing operations from pilot boats in the area concerned.'*
- 5.2.119. The Relevant Representations noted above are all from PA2008 s42 consultees.
- 5.2.120. London Gateway Port Limited (LGPL) [[RR-013](#)] made a RR which included an objection that it had shipping and navigation safety concerns as an important and relevant maritime stakeholder but it had not been consulted prior to the application.
- 5.2.121. Port of Tilbury London Limited (PoTLL) submitted a similar representation to that made by LGPL but it was received after the deadline for relevant

representations [[AS-005](#)] and subsequently PoTLL was invited by the ExA to participate in the Examination as an Other Person (OP). The two ports combined their participation in the Examination.

- 5.2.122. Recreational boating and fishing interests in the local area also have relevance to navigational safety concerns. Insofar as they are of importance and relevance to the Proposed Development they are reported separately below.
- 5.2.123. The ExA has identified the following considerations arising from the matters raised by the maritime stakeholders:
- is the definition of safe sea room for the combination of navigational activities understood and agreed with stakeholders?
  - is the assessment of the navigational risk effects of the Proposed Development soundly based, robust and agreed with stakeholders and has any increased risk been mitigated to as low as reasonably practicable (ALARP)?
  - Have societal concerns been addressed and is societal risk arising from the Proposed Development acceptable/tolerable?
  - Did the introduction of the SEZ as additional risk control serve to sufficiently reduce risks to an acceptable/tolerable level (including meeting ALARP)?
  - what effects if any would the Proposed Development have on adjacent pilot transfer operations?
  - what consequential effects if any would the Proposed Development have on adjacent shipping routes and approaches to ports?
  - what consequential effects if any would the Proposed Development have on ports and port operations approached by shipping routes past the Proposed Development?
  - How do the probable effects of the Proposed Development as amended by the SEZ meet applicable policy tests?
- 5.2.124. The following section uses the same subsection headings as the Applicant's Case set out above, with the addition of a subsection discussing the process and conclusions of navigational risk assessment, which in itself caused a substantial number of concerns as to adequacy and accuracy of communications.

### **Navigational risk assessment**

- 5.2.125. ISH2, held immediately after the start of the Examination, drew out a substantial commonality of themes of objection between IPs, all founded on safety concerns due to reduction of available sea room.
- 5.2.126. The same sea space is used for combinations of marine activities including passage of vessels, fishing, and manoeuvres of large vessels to transfer pilots.
- 5.2.127. The sea space of concern is constrained between the Proposed Development and fixed geographic features, including reduced water depth of NE Spit; the Margate Road anchorage; and navigation marks, notably NE Spit Racon buoy and Elbow buoy.

- 5.2.128. IPs also raised a number of issues concerning the level to which the Pilot Transfer Bridge Simulation (PTBS) as carried out can be relied on as an assessment of additional risk as input to the NRA.
- 5.2.129. These IP concerns were in essence:
- that the range of vessel types and sizes was too limited;
  - the Metocean conditions modelled were not suitably robust to establish limit states for safe operations;
  - lack of realism due to the use of experienced mariners to carry out consecutive simulations without the complications of communications difficulties, lack of familiarity with local sea area; and
  - lack of modelling of emergency situations such as loss of power or steering or problems with boarding ladder.
- 5.2.130. The ExA examined why this set of concerns arose despite consultation with stakeholders having taken place to establish the simulation study and finds that there seems to have been gaps in expectation management and lack of clarity of purpose or what the simulation was expected to or able to achieve.
- 5.2.131. Responding to the IP and OP concerns raised at ISH2 and ISH5, the Applicant conducted at the end of February 2019 a stakeholder workshop to establish additional understanding of expectations for safe sea room. Subsequent to that workshop, as a mitigation of increased risk, the Applicant introduced a Structures Exclusion Zone (SEZ) as a material change at Deadline 4 at the end of March. This is reported in more detail at para 5.2.80 above and its following paragraphs.
- 5.2.132. The extent of the SEZ proposed had not been discussed with stakeholders and was well short of the reduction in Red Line Boundary that IPs and OPs had submitted was necessary to satisfy them on safety concerns; essentially some local stakeholders felt that the extent of the existing TOWF WTG array was already at the limit of what was tolerable as a constraint on safe sea room.
- 5.2.133. Following the introduction of the SEZ the Applicant conducted a risk assessment workshop with stakeholders. Subsequently an NRA Addendum (NRA Addendum) [[REP4B-002](#)] was submitted to Deadline 4B.
- 5.2.134. As introduced in para 5.2.14 above, the reliability of the NRA as a foundational document was substantially tested in Examination. The Applicant has maintained throughout the Examination the reliability of its Navigation Risk Assessment as a foundational input to its Environmental Impact Assessment. However, the IPs and OPs vigorously contested the conclusion of the NRA that the increased risk to shipping and navigation presented by the Proposed Development is acceptable.
- 5.2.135. The minutes of a meeting post-application between the Applicant, MCA and TH on 4<sup>th</sup> Oct 2018, which were submitted as [[REP1-086](#)], record that:



- TH and MCA both confirmed that they accepted the NRA as compliant with the guidance of MGN543 (subject to some suggested improvements to confirm compliance) but they did not accept as acceptable the reported increase in risk of collision as an effect of the Proposed Development from 1 in 6 years to 1 in 4.5 years;
- The Applicant's consultant, Dr Rogers for Marico, sought clarification for the disagreement, noting that *'the increase in risk represented likelihood of collision, but not consequence...'* and that there seemed to be lack of understanding of the use of the words 'tolerability' and 'acceptability';
- In the opinion of MCA a change to the Red Line Boundary (RLB) was necessary and that the various Relevant Representations (RRs) *'should provide sufficient evidence of this need.'* The change already made to the RLB pre-application was not to the extent expected by MCA and TH to change their views *'on the navigational safety aspects of the project'*;

5.2.136. In its post-meeting clarification to the minutes of the 4<sup>th</sup> Oct 2018 meeting 4<sup>th</sup> Oct 2018, introduced above and submitted as [[REP1-086](#)], MCA wrote: *'The MCA has attended at least five meetings already, and multiple representative [sic] from MCA have spent a significant amount of time on this one project. MCA do not consider it their responsibility to tell developers what the figures in the risk assessment should be - as a regulator, our role is to inspect and examine the information provided based on our guidance, not to provide the evidence for it. MCA are therefore not proposing to participate in a risk matrix workshop at the current time. MCA are of course interested in the outcome of that workshop, and we will have the opportunity to reconsider our position as we go forward through the PINs process.'*

5.2.137. MCA and TH both made a number of post-meeting corrections and side-bar comments to the minutes of the meeting 4<sup>th</sup> Oct 2018, introduced above, which were submitted as [[REP1-086](#)] and include the following:

- Both parties confirmed 'there were limitations raised with the pilotage study during the consultation period, and how "realistic" the trials were'; this had been highlighted at previous meetings;
- The justification for their position that the additional risk was unacceptable in the circumstances was due to the multiple effects of the Proposed Development, namely: *'...the cumulative impact, the increase in hazards and likelihood, and the resultant changes required (pilot boarding, less area for manoeuvrability of larger commercial vessels, operational implications including emergency response/readiness and additional pressure on mariners in an already complex area for navigation...'*
- MCA's concern is 'the safety of navigation, and if there is more pressure placed on pilots, and other vessels with restricted sea room, this has an impact on the safety of navigation.'
- Whilst safety and commercial issues are agreed to be separate, *'MCA's approach to carrying out its assessment of the results of the NRA is to listen to the concerns of its stakeholders'* and where there is interaction between commercial aspects of navigation *'such as longer*

*passage plans, and deviation, impact on pilotage boarding', then the MCA has an interest.*

- DCO conditions were briefly discussed but not agreed.
- MCA clarified that the NRA 'has been discussed by the SUNK VTS User Group, the VTS Policy Steering Group, Navigation Safety Branch, MCA, HM Coastguard and The UK's Safety of Navigation Committee'
- Furthermore 'the NRA is a tool to provide us with the evidence we need to make our own assessment in consultation with our stakeholders. And on this occasion, we have unanimous agreement that this project is not acceptable with the current redline boundary.'
- MCA observed that '(I)t appears that Vattenfall are not taking this feedback onboard...'. TH agreed with the comments above.

5.2.138. At [\[REP4C-014\]](#) MCA confirmed in written statement of evidence to inform ISH8: *'the MCA however remains concerned that there is no current agreement between the IPs and the applicant, and would be keen to see these discussions progress until such time as when agreement can be reached on whether the risk is deemed ALARP with appropriate mitigation. The MCA does have comments on the addendum NRA with regards to mitigation, as it is not clear in this document which mitigations are embedded and which are additional risk control options for the increase in risk.'*

5.2.139. In [\[REP6-087\]](#) MCA comments: *'According to the risk matrix in Figure 25, these scores fall into the category of 'Tolerable with controls', not automatically ALARP. It is understood the risk scores have been calculated using the consultants risk scoring software however it is not clear on what these calculations are based.'*

5.2.140. In addition in [\[REP6-087\]](#) MCA disagrees with mitigation/risk controls proposed, notably: *'MCA contends that the promulgation of information, as stated in the NRA Addendum Rev A section 134, should be an embedded risk mitigation measure since the charting of hazards, issuing Notices to Mariners and promulgating information to fishing and recreational users are standard practices in the industry for notifying mariners and ensuring they have up to date information so they can safely plan and conduct their passage. Therefore, MCA's opinion is that these need to be separated from the risk control in para 135 into its own embedded risk control in para 134.'*

5.2.141. In the annex to [\[AS-025\]](#) responding to Applicant's Deadline 7 responses to IP submissions at Deadline 6, MCA rebuts the Applicant's statement that the MCA basis for acceptability in its concluding (Deadline 6) position does not appear to be *'independently based on any guidance in ...MGN543 or any other guidance provided by the MCA ...'*. MCA clarifies in [\[AS-025\]](#) that *'... stakeholder consensus should be reached and if not MCA makes recommendations'*. MCA also quotes Section 9.3 of the MCA-DECC 2013 Methodology for Assessing the Marine Navigational Safety & Emergency Response Risks of Offshore Renewable Energy Installations (OREI) (which is required to be read in conjunction with MGN 543): *'The aim is to involve stakeholders at all stages with the aim of achieving consensus [on consent decision]. However, DECC/DFT/MCA must make*

*recommendations to Ministers where consensus is not possible, for example because different stakeholders hold opposite views based on deep-rooted beliefs... and 'MCA does not agree with the embedded and additional risk control measures and is unable to accept ALARP has been reached.'*

- 5.2.142. PoTLL/LGPL also contested the adequacy of the NRA itself and consequent conclusions of the ES about the potential economic impacts on commercial vessels, with a major focus on the safety of navigation, including pilot transfer operations, in sea room reduced by the construction of the Proposed Development.
- 5.2.143. One foundational assumption in the NRA is the growth in future baseline shipping traffic of 10% over the project lifetime. PoTLL/LGPL vigorously contested this figure as a substantial under-representation. In their final statement at [[REP7-042](#)] they note that this figure of traffic growth would be achieved by the consented development of Tilbury 2 alone: *'As set out in the Ports' Deadline 6 Representations, the Tilbury2 Environmental Statement indicates that based on 2016/17 data there will be an increase in vessel movements in the Thames Estuary of up to 10% as a result of the development of Tilbury2'*; notwithstanding the consented additional capacity for over 50% growth at DP World London Gateway Port, albeit serving larger vessels. *'The Ports consider that it is difficult to understand how a 10% growth figure for a 35 year period from 2019 (reasonable planning horizon as referenced in the EXA's ISH2 Action Points (EV-003)) is considered precautionary in the context of 7% growth in 10 years and recent growth of 11% for the Port of London.'*
- 5.2.144. In [[REP4C-012](#)] (which was captioned as a D4a submission in error but accepted by the ExA as an appropriate submission for D4c), London Pilots Council (LPC) submits: *'The workshops [sic] focus has been on traffic data from AIS tracks, Pilot boat data and Incident reports, all of which have been shown in the Applicants NRA but the validity of which has been contested by all IPs. However, all of the above is looking out of the rear view window. There is virtually no consideration given to the immense increase in trade to the Port of London. The PLA business is experiencing continued growth and expected to continue with three new terminals at the London Gateway planned, upgraded tanker terminals at Grays, Vopak, Oikos and of course Tilbury 2 and additional new reefer trades to Tilbury LCT all of which amount to a significant increase in number of vessels and of increased size of vessel. We must avoid using yesterday's data to create the safe safe [sic] navigational sea area required for the expanding business of tomorrow.'*
- 5.2.145. In [[REP6-104](#)] Port of Sheerness (PoS) confirmed: *'There has been an increase in chargeable ship arrivals at Medway ports using NE Spit Boarding and Landing Station of 7.82% comparing 2016 and 2017 Pilotage Acts and 5.16% comparing 2017 and 2018 Pilotage Acts, representing a total increase of 12.98% over a 3 year period. PSL consider this trend will continue. Whilst the trend may be for larger vessels in the Estuary as a whole, the River Medway has terminals unsuited to such vessels and therefore consider the continued use by*

*smaller vessels in the future should be taken account of when quantifying and forecasting future trade.'*

5.2.146. In [REP7-042], LGPL/PoTLL concludes: 'As set out in more detail at ISH8 and in the Deadline 4C representations [REP4C-016], the Ports remain to be convinced that a SEZ is the appropriate means to seek to reduce the impact of the extension to the offshore wind farm. The appropriate starting point to try and mitigate the impacts of the wind farm extension must be through an order limits reduction.' They object to the conclusion of the NRA and NRA Addendum as follows: 'As is demonstrated by the Applicant's shipping commercial assessment (Annex C to Appendix 16) [REP6-020], the risks to stakeholders are at least consequence category 3 (when diverted transits and additional occasions when a vessel cannot take a pilot are considered) occurring on a yearly basis and thus result in a risk score above ALARP.' And PoTLL/LGPL conclude: 'The Ports consider that in its current form and based on the evidence before the ExA, the application for development consent should not be granted owing to uncertainty as to the economic impact and navigational safety implications of the scheme. These implications have not been properly assessed, as outlined above and in more detail in numerous representations of the Ports and other IPs.'

5.2.147. In their closing submission [REP7-042], LGPL/PoTLL disputes the Applicant's characterisation of the hazard workshop outcomes and states in regard to the hazard outcomes (consequences) of one of the four hazards discussed in detail with stakeholders at that workshop: 'As discussed in detail herein within comments on the Applicant's response to EXQ 3.12.32(e) and EXQ 3.12.33, the Ports do not accept that these hazard outcomes were or are agreed.' One example cited is 'The Applicant's response is completely contrary to the discussions and subsequent agreement reached between the IPs and the Applicant at the HAZID workshop on 29 March 2019...all IPs present asserted and agreed that a glancing blow between a Class 1 / 2 vessel and a fishing vessel would almost inevitably result in the sinking of the fishing vessel. This was therefore considered within the range of most likely outcomes. While it was understood that the consequence for the fishing vessel falls to be considered under Hazard ID 4, the consequence for the Class 1 / 2 vessel of being involved in a collision which results in the sinking of a fishing vessel needs to be considered as well.'

### **Pilot transfer operations**

5.2.148. PoTLL/LGPL argue in [REP7-042] that the relevant factor for safe sea room is that existing use by larger vessels of the critically contested pilot transfer facilities at NE Spit is predicted to increase further with the growth in Ultra-Large Container Ships that are accommodated at London Gateway Port and because pressure on pilot boarding at the more northerly SUNK PBD is leading to large, deep-draught<sup>59</sup> ships seeking to

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<sup>59</sup> Draught (or draft) of a vessel is the vertical distance from the surface of the water to the underside of its hull or keel. For navigational **[continued overleaf >]**

board pilots more often at NE Spit PBD. This point is reinforced by LPC in [REP5-061] as discussed at para 5.2.93 above. Furthermore, in adverse Metocean conditions, NE Spit Pilot transfer operations continue when no other pilot operations are possible in the Thames approaches.

- 5.2.149. In their [REP5-061] final submission following ISH8, LPC explains: *'The increase in business and vessel numbers has in turn increased the demand for landing and boarding more vessels and bigger and deeper vessels at the NESP. One future development plan to cope with the requirement is to reopen the deep water route in the North Edinburgh Channel, 6 mile NW of the NESP Racon Buoy... The channel entrance will require dredging and navigation buoyage to be installed but the growth in traffic and overall vessel sizes as shown above together with the pressures of multiple large vessel boardings at the Sunk pilot station, has created an immediate demand for deep draft Class1 and Ultra large (ULCS) vessels to transit the North Edinburgh Channel to and from the NESP at drafts up to 13.5 meters, having boarded or landed a Pilot at the NESP. This is a major factor in the future growth of business in the Port of London...'*
- 5.2.150. In its [REP7-043] final submission PLA confirms that this opening up of relevant additional deep water channels is under current consideration: *'The PLA's previous study, referred to by the Applicant in its response to this question, was undertaken in 2004. Seabed conditions have continued to be monitored since then and a recent feasibility study has been undertaken. The PLA, is now considering the options to dredge either the Fisherman's Gat or North /Edinburgh Channel.'*
- 5.2.151. The PLA/ESL representation at [REP4C-015] continues to provide detailed criticism of the sea room available for pilot transfer, including: *'ESL's and the PLA's concerns regarding the compression of the inner boarding ground area, combined with the likely increase in traffic density have not been changed by the introduction of an SEZ of the limited geographic extent proposed by the Applicant.'*
- 5.2.152. PLA/ESL in their final position at [REP7-043] disagree with the Applicant's assessment that the use of the Tongue pilot boarding station and the need to relocate it as an effect of the Proposed Development: *'It is not highly unlikely that 132 would be served at the Tongue. The Applicant's figures do not take into consideration the PLA's plans to open up either the North Edinburgh Channel or Fisherman's Gat, or the potential*

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**[< continued from above]** purposes, this normally means maximum draught to the lowest point of its hull or keel irrespective of fore and aft trim. Draught determines the minimum depth of water that a vessel can navigate, and allowance is also made by navigators for heel (lean) and squat (when accelerating or decelerating). With a large cargo vessel there can be a very significant differential between its draught fully laden to that when unladen. The tidal range presents a very significant differential in depth of water at different states of tide, which is particularly relevant in channels of limited depth. Therefore, a large ship may be able to pass through channels of more constrained water depth at high tide and when unladen and still have sufficient safe under-keel clearance, whilst its pilotage and routing would be substantially more restricted when laden at low tide.

*rerouting of vessels from the inshore route as a consequence of the proposed TEOWF.'*

- 5.2.153. At [REP6-100] PLA/ESL clarify: *'The PLA and ESL understand that the agreement of Interested Parties in relation to sea-room at the Elbow is only in the context of vessels in transit. The sea room in the Elbow area has not – at least so far as the PLA and ESL are concerned – been agreed or justified in relation to pilot boarding and landing operations.'*
- 5.2.154. In [REP7-043] PLA/ESL also object to the Applicant's additional Report on animations of pilot transfer operations submitted as [REP6-060] after the NRA Addendum was produced, arguing that *'the days in this report cannot be accepted as busiest days and the PLA and ESL would question the Applicant's overall interpretation of 'busiest' periods.'* They continue to object; *'...suggesting that busy runs/periods are a rare occurrence is incorrect. It highlights the inadequacies of short study periods and their inability to accurately capture the overall picture.'*
- 5.2.155. PLA/ESL also dispute in [REP7-043] the Applicant's claim to represent extreme Metocean conditions, providing evidence that on the day scrutinised the wind strength, direction and tides were not of a range that would generate the worst wave conditions. They also provide detailed commentary on specific vessel manoeuvres plotted in this study, for example: *'The 'Valentine' is a twin screw (two propellers) Ro-Ro vessel. Making a 120 degree turn is not difficult for such a vessel in normal conditions. Many vessels served by ESL are single screw, considerably heavier and are not so manoeuvrable and require more sea room.'*
- 5.2.156. PLA/ESL conclude [REP7-043] with criticism of the overall analysis by Captain Simon Moore and Commander Paul Brown, both acting for Marico, as follows: *'... the animations did not represent 'limit state' conditions. Also, on the days in question, there were no occurrences of emergency situations, pilot ladder deficiencies, or other incidents, which may have resulted in the need for more sea room.'*

### **Sea room for safe navigation**

- 5.2.157. This subsection relates closely to and builds on the subsection discussing pilot transfer operations that constitute an important part of the navigational activities in the sea area under consideration, primarily to the west and north-west of the Proposed Development. It starts with a review of whether or not the sea area contains a 'designated sea lane' and the likely overall effect of the Proposed Development including whether the Proposed Development might present an obstruction or danger to navigation or effects to the shipping industry.
- 5.2.158. In the context of whether the sea area around the Thanet OWF contains recognised sea lanes or not, in [REP8-003] *'Applicant's final position on outstanding matters'* the Applicant noted that this area of sea within which the inshore route lies was characterised by Trinity House (TH) during the Examination as an 'area of general navigation'. In fact TH responded at [REP3-071] that *'Trinity House are of the opinion that the*

*area between the proposed development and Kent coast is used by all types of marine vessels for navigation and will defer to the MCA/DfT on the legal definitions required.'*

- 5.2.159. TH also corrected at [REP6-108] the Applicant's [REP5-018] submission with the comment: *'We would not describe it as "an area of open sea" as there are numerous navigational hazards in the area such as the sandbanks, coast and a lot of other marine users.'* TH also noted in this [REP6-108] submission that: *'Admiralty Pilot Book NP 28 4.66 1 states: "The Downs and Gull Stream form a passage bounded to the W by coastal banks and to the East by Goodwin Sands. Vessels of suitable draught en-route from the Channel to the Thames Estuary generally use it in preference to the route E of Goodwin Sands as this route brings vessels to the Goodwin Knoll lightbuoy [and] the next waypoint on their course is likely to be the Elbow Buoy bringing them to the west of the existing windfarm.'*
- 5.2.160. In [REP3-082] MCA submits legal advice from DfT lawyers on the definition of the sea space: *'With regards to what constitutes a "formally charted/ designated sea lane" this means that the sea lane is marked on the nautical chart. The sea area we are concerned about is not on the nautical chart, and therefore we are not aware that this 'channel' is recognised as an International Sea Lane.'*
- 5.2.161. In [REP3-082] MCA also notes: *'2.6.161-3 EN3 should also be read in the context of 2.6.168 of EN3 which states: "The IPC should, in determining whether to grant consent for the construction or extension of an offshore wind farm, and what requirements to include in such a consent, have regard to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the development." This reflects the requirement in s.36B (2) of the Electricity Act 1989. Therefore, any concerns about traffic between the Thanet wind farm and the Kent coast could also be articulated by reference to this paragraph (2.1.168) in the EN3.'*
- 5.2.162. In [REP3-082] MCA's submission also states: *'The area in question is certainly used by international trading ships on a frequent basis - as a weekly/monthly AIS graphic for routes taken by tankers provides a good indicative snapshot. The area is used for navigation, leads onto Queens Channel and then onto the Thames and Medway Ports via Princes Channel or Fisherman's Gat. It is part of a recognised route for shallower draught vessels not wishing to make the long detour around the Sunk Traffic Separation Scheme.'*
- 5.2.163. In its closing statement [REP6-108] Trinity House observes: *'...the NRA Addendum only identified a limited amount of general risks and we cannot categorically state that "all" risks to shipping and navigation have been reduced to ALARP as this concept also has a commercial element involved for the applicant...With the introduction of the NRA Addendum it is not easily apparent what document is relevant during construction...TH are content, with some reservations, that the project would be*

*acceptable...We are still concerned that available sea room can be reduced with the introduction of "temporary" structure within the SEZ which, depending on their location, could have an effect on the marine operations in the area...The proximity of the development to the coast and the range of marine activity in the area, mean the consequences of an incident in this location could be extremely severe. All phases of the project must be considered and not just the operational phase highlighted in the NRA Addendum when assessing the project.'*

- 5.2.164. In its Deadline 4C [[REP4C-019](#)] the UK Chamber of Shipping confirms: *'Local knowledge and expertise appears to indicate that there is not enough sea room available under the current plans as these waters are used for general navigation as well as for pilotage means. The UK Chamber therefore proposes that more consideration be taken on the inclusion of qualitative information into this process.'*
- 5.2.165. Despite the introduction of the SEZ and consequent NRA Addendum, IPs and OPs submitted in closing representations (as referenced in the following paragraphs) that they do not consider the extent of the SEZ to be sufficient to mitigate risk to navigation primarily in the space between the Proposed Development and the NE Spit Racon buoy (which marks the end of the spit itself), and to a lesser extent the Elbow buoy. Concerns were raised about uncertainties of definition of the SEZ, notably during construction, (which is stated by the Applicant to be the period where risk to navigation is most increased), the SEZ would be reduced by a (rolling) 500m. construction safety zone with significant additional encroachment into sea room, and therefore increasing compression of traffic in this space and consequential increase in navigational risk.
- 5.2.166. In [[REP7-042](#)], LGPL/PoTLL asserted *'... that if there were six occasions when four or more concurrent transits occurred and on all six occasions they corresponded with high tide, then this would appear to demonstrate a very strong correlation between tidal time and congestion, not "little correlation" as the Applicant suggests in its response.'* This refers to the Applicant's response to ExA question 3.12.32 (regarding how effect of traffic compression due to vessel passages timed around high tide has been taken into consideration in assessing risk and effects of development) in which the Applicant stated that the height of tide *'is not considered significant'* and *'...there is actually little correlation between tidal time and congestion for the inshore route...'*
- 5.2.167. In its final position stated in [[REP6-087](#)] MCA: *'remains concerned regarding the following: 1) the available sea room for Pilot operations to be carried out and the failure to obtain IP agreement regarding the risks to pilotage. This therefore has implications on our considerations for the safety of navigation; 2) The MCA does not agree with the list of embedded and additional risk control measures as detailed above and therefore are unable to accept the final risk scores as ALARP; 3) It is yet to be confirmed what subsea infrastructure, cables, jack up and other construction equipment can be utilised in the SEZ, and how these risks will be mitigated. We also note safety zones could be enforced in the SEZ; and 4) We remain concerned about the consequence of an incident*



*in this highly complex area for navigation....Based on the above concerns the MCA is unable to agree that the proposed project is acceptable with regards to the safety of navigation.'*

- 5.2.168. In its final Statement of Common Ground [[REP7-032](#)] the UK Chamber of Shipping states: *'The chamber agrees that the SEZ provides 2.1nm between the Elbow buoy and the turbines but does not support this distance as being sufficient to ensure, so far as possible, safety of navigation within the area... The chamber supports the introduction of the SEZ but further clarification as to the terms of the SEZ need to be provided. The chamber does not agree that the risk has been reduced to a tolerable amount to ensure safety of navigation within the concerned area...The chamber does not agree that the NRA addendum has reduced the risks to the inshore as ALARP due to the lack of qualitative data. The SEZ is a compromise for this proposal but does not mitigate all associated risks within the area... The chamber disagrees that the Hazard Log adequately quantifies and scores the relevant risks... The chamber disagrees that the ES assess [sic] the magnitude and range of navigational safety impacts from the proposed Project on passage of commercial vessels... The chamber disagrees that the ES adequately assesses impacts on shipping routes and gives appropriate weighting on routes that whilst locally important are not international shipping lanes.'*
- 5.2.169. In [[REP4C-012](#)] LPC also provides extensive additional evidence on the growth of large vessel facilities and operations in the Thames Estuary, and notes: *'ULCS Container vessels at drafts at or below 10m have been risk assessed for the NESP and 300m Large Container vessels are now frequently boarded and landed at the NESP... By accommodating increased numbers of large vessels at the NESP then pressure is taken off the Sunk for London traffic boardings.'*
- 5.2.170. In their [[REP5-061](#)] final submission following ISH8, LPC continues: *'Serving larger and deeper vessels with greater manoeuvring characteristics such as turn radius, smaller rates of turn and greater time required steaming on an embarkation heading to get the Pilot onboard all require greater amounts of sea room and a requirement for greater margins for vessel speed and position, traffic density, weather conditions and the proximity of fishing vessels and leisure craft... Combining all of these factors then it is not in the best practice of seamanship or vessel safety to initiate and complete a manoeuvre requiring a large change of heading of a ULCS for a Pilot in less than 2 miles sea room. The time and distance factor for margin of error is very small ...'*
- 5.2.171. In its [[REP5-061](#)] submission following ISH8, LPC argues that the critical sea room requirement is not that at the NE Spit PBD but between the Proposed Development and the NE Spit Racon buoy. In that submission LPC presented a preferred red-line boundary (fig. A) and submitted data on the manoeuvring characteristics of relevant vessel types to explain and justify its final recommendation for the need for 3nm sea room for safe general navigation and dip-down for pilot transfer between the Proposed Development and the NE Spit Racon buoy, comprised of 2nm navigable water plus 1nm safety buffer. The ExA notes that the need for

such a safety buffer in areas of complex navigation has been argued extensively by multiple IPs in order to allow ship's masters to cope with hazardous or emergency situations such collision avoidance manoeuvres, loss of engine power or steering; or failure to transfer a pilot in the normal allowed distance and heading in case of boarding ladder failure or communications error. The ExA also notes that the sea space at this location allowed by the Applicant's SEZ proposal is the lower amount of 2.5nm as demonstrated in Fig. 1 of [REP4-018].

- 5.2.172. Also in [REP5-061] LPC presents final evidence of the effect of windfarms on ship-borne radar usage, contesting the evidence given by Capt Moore at ISH8. The Applicant provided a detailed response at [REP6-039]. This matter is further discussed at para 5.2.205 below.
- 5.2.173. PLA/ ESL position regarding the SEZ has not altered since their representation at [REP4C-015]: *PLA and ESL 'do not consider that the SEZ proposal in its current form and the NRA addendum adequately address the concerns they have previously raised regarding the reduction in sea room. As previously submitted, the PLA and ESL remain of the view that a reduction of the red line boundary ("RLB") remains the simplest and most effective means by which to address their concerns.....The amount and types of activity which would still be permissible within the SEZ mean that the majority of the PLA and ESL's concerns about sea room remain. It would seem that all ancillary works under the DCO would still be permitted in the SEZ. This covers a wider array of activities including the placing of temporary landing places/moorings for construction and maintenance. The PLA and ESL are concerned about any potential encroachment into the available sea room.'*
- 5.2.174. The PLA/ ESL representation at [REP4C-015] provides detailed criticism of the sea room available for pilot transfer and with the process and outcomes of the NRA Addendum, including: *'...the risk assessment workshop only looked at the area directly to the west of the proposed extension, in relation to the proposed SEZ, as this was considered to be the area of highest concern. There was no time for consideration of the other parts of the proposed TEOWF, such as the Tongue and the Elbow, despite these still being areas of concern to the IPs.'*
- 5.2.175. At [REP6-100] *'The PLA and ESL note that the LPC requirement for boarding and landing is 2 miles plus a 1 mile buffer. This is the same as that being requested in the PLA and ESL submissions.'*
- 5.2.176. Following further Examination at ISH8 and through additional written representations PLA/ESL conclude in their final submission at [REP7-043] that: *'PLA and ESL are still not satisfied that the risks of the extension to TOW have been sufficiently mitigated to ALARP...The PLA and ESL do not believe that the NRA and NRA Addendum demonstrate that sufficient sea-room still exists to safely undertake pilotage operations, in combination with all other activities in the area. This is for the reasons stated in their ... previous deadline submissions...The PLA and ESL understand that the LPC's comments on sea-room only relate to vessels*

*transiting and not to pilotage transfer operations being undertaken in conjunction with boarding and landing.'*

- 5.2.177. In [\[REP7-043\]](#) PLA/ESL state: *'The PLA and ESL do not agree that the NRA Addendum conducted with IP involvement demonstrated that all hazards were assessed as ALARP or lower. Although the overall methodology is similar to that previously employed by the PLA, there was a significant difference in the way that some hazards, specifically those relating to the risk of collision, were scored. (see PLA 27 / ESL 27 response to ExQ3.12.21(d)'. Specifically, they contest the Applicant statement that stakeholder consequences of hazards had been properly considered: 'Although the impact to stakeholders, specifically to vessel operators, was considered for the "worst credible hazard", it was not considered in terms of the most likely hazard. A collision between two Class 1 vessels, resulting in 'minor' damage, could still have significant financial consequences. Such vessels would incur delays a result of such an incident, for inspections/repairs and this could easily result in financial consequences to those vessels amounting to more than £100,000... Scores were not considered in combination, as, even when assessing the risk of a collision between two vessels, only the consequence of the collision to one of the vessels was scored for each hazard... the usual method for scoring such hazards is to consider the total consequence of the event, and not just one part of that event.'*
- 5.2.178. Addressing in their Deadline 7 submission [\[REP7-043\]](#) the Anatec late stage Collision Assessment Report [\[REP6-064\]](#), the PLA and ESL note that they had insufficient time to properly study and comment on the Report. They re-affirm they do not agree 10% future traffic growth is suitable for this area, referring to their response to ExQ3.12.5. Also, they *'do not agree that this study is directly comparable to the other wind farm projects referenced in table 5.2, primarily because the study areas for the other windfarms were considerably bigger. They note that Anatec also state that the results are not directly comparable.'*
- 5.2.179. PLA/ESL conclude in [\[REP7-043\]](#): *'The quantitative collision risk modelling that accompanies the Applicant's deadline 6 submission did not take account of adverse MetOcean conditions or the consequences of any emergency scenarios, such as engine or steering failures...ALARP is more than just a number on a score sheet. If the PLA was not satisfied that risks had been sufficiently mitigated to as low as reasonably practicable it would not accept a scored assessment that demonstrates that they are. In the case of TEOW the PLA and ESL do not agree that the risks have been sufficiently mitigated to bring them to ALARP and therefore do not agree that the scored assessment reflects the actual situation...'*
- 5.2.180. PLA/ESL comment also in their final submission [\[REP7-043\]](#) on the Applicant's response to ExQ3.1.2 regarding QA processes for the NRA: *'It would appear that the QA process is undertaken entirely in house. All 'independent' review appears to be undertaken by people who work for Marico, which is engaged by the Applicant in a non-independent capacity.'*

## Ports and port operations

- 5.2.181. In their representation at [[REP7-042](#)] in response to the Applicant's D6 submissions, LGPL/PoTLL ('The Ports') note: *'that the only assessment of economic effects submitted by the Applicant to inform the examination is that now provided as Annex C to Appendix 16 of the Deadline 6 submissions [REP6-020]. Therefore it is not clear what assessment gives rise to the Applicant's conclusion of "negligible impact", and the apparent attempts by the Applicant to distance itself from the conclusions provided within the submitted assessment seem perverse given that this is the only assessment which has been submitted in support of the application...*
- 5.2.182. In respect of increased transit time and distance occasioned by ship's masters or navigators considering the risks of passing the inshore route to be unacceptable in the conditions, PoTLL and LGPL's [[REP1-148](#)] submission at Annex 3 to Appendix A argues that the extra distance incurred in not using the inshore route is significant at 14.4nm. In [[REP5-071](#)] page 10, PoTLL/LGPL demonstrated that even without dip-down to transfer a pilot, diversion around the east of the TEOW would be an additional passage distance of at least 11nm which would incur about one hour's extra steaming time at normal vessel speeds. Commercial impacts of such a diversion were presented at page 5 of the same representation.
- 5.2.183. In their final position at [[REP7-042](#)] PoTLL/LGPL argue that the Applicant has not made adequate assessment of economic effects of navigational risk (whether actual or perceived) on the time-sensitive nature of some of the shipping that they serve, notably deliveries of fruit and other foodstuffs and 'Just-in-Time' supply chain deliveries, which: *'demonstrates a significantly outdated understanding of the modern logistics industry which has shifted significantly to a 'just in time' delivery approach. It also pays no regard to the significant quantities of perishable goods being imported via London ports (see the Port's Deadline 6 Representations [REP6-105].'*
- 5.2.184. In [[REP7-042](#)] PoTLL/LGPL make the case for the importance of maintaining resilience of access to London ports, which benefit from inland location on the Thames, noting: *'The weather resilience of LGP was reinforced earlier this year when Europe was hit by 10 days of strong winds. It caused massive issues in the ports around the UK, however LGP was only shut for 12hrs shipside and 4 hrs landside...Such resilience to adverse weather is part of DPWLG's unique selling point and contributes significantly to DPWLG's efficiency and thus its ability to compete with other ports such as Felixstowe. It also influences commercial decisions (i.e. by shipping lines) to provide services to DPWLG. If such efficiency was adversely affected due to delays to shipping on approach, the result would be an adverse effect on DPWLG's competitiveness.'*

## ExA Response

### Introduction

- 5.2.185. This following section addresses the evidence introduced above, synthesises the issues raised and applies relevant policy and legislative tests.
- 5.2.186. Final SOCGs with the IPs and OPs concerned with Shipping and Navigation reported the large majority of substantive matters concerning the ES, the navigation risk assessment, the Red Line Boundary and the SEZ remained 'not agreed' with the Applicant's position, namely:
- with the MCA [[REP6-013](#)];
  - with TH [[REP6-025](#)];
  - with PoTLL/LGPL [[REP6-106](#)];
  - with PLA [[REP7-028](#)];
  - with ESL [[REP7-029](#)]; and
  - with UK Chamber of Shipping [[REP7-032](#)].
- 5.2.187. The ExA recognised that it was important to consider if any of the IPs and OPs have any vested interest in resisting the proposed extension to the Thanet Offshore Windfarm and found to the contrary; there appears to be general support for the Offshore Wind Industry and opposition to the detail of this Proposed Development from maritime stakeholders, (including the statutory authorities) has been founded on public interest navigational safety concerns due to effects of the Proposed Development on reduction of sea room and consequential effects on safety, efficiency and resilience of shipping, port and pilot operations.
- 5.2.188. The extent and weight of concerns on this matter raised by IPs and OPs in their RR and WRs was notable (as reported above). Consequently, the ExA made a procedural decision to hold an early Issue Specific Hearing (ISH2) the day after the Preliminary Meeting to explore these issues with the Applicant, IPs and OPs and to enable the maximum amount of time in the Examination to discover and test the issues identified. The ExA's rationale for this procedural decision (set out in the Rule 6 Letter [[PD-006](#)], explained orally at the PM [[EV-004](#)], documented in the Rule 8 Letter [[PD-009](#)] and explained orally again at the outset of ISH2 [[EV-006](#)]<sup>60</sup>) was to ensure that if the Applicant was minded to make changes to the application to address these concerns, that there would be sufficient time in the Examination to enable a material change process to be carried out.
- 5.2.189. Opposition to the detail of the Proposed Development from multiple stakeholders has been consistently expressed and the Applicant has been provided early and repeated opportunity to modify its proposals to reduce perceived risk yet the Applicant has stood by its quantitative assessment of all marine navigational risk falling within the MGN543

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<sup>60</sup> At audio time-marker 00:08:25.

methodological range of Tolerable if mitigated to ALARP, As Low As Reasonably Practicable.

- 5.2.190. The ExA has considered a very broad set of evidence from all parties, some of which has evolved and changed over the course of the Examination; some of which has revealed long-standing contention, recurrent misunderstanding, misinterpretation or misreporting out of context by the Applicant of recorded meetings or statements by IPs. It has been necessary therefore to focus on the relative reliability of witnesses and evidence and counter-evidence submitted in the later stages of the Examination. Quotations and citations below are necessarily selective in order to address the critical issues and sub-issues that the ExA judges most relevant and important.
- 5.2.191. The ExA notes the diligent participation of MCA throughout the Examination, including attendance in the capacity of independent observer at additional stakeholder workshops convened by the Applicant during the Examination. The ExA particularly notes the MCA submission [[REP2-041](#)] (which comments on the input of multiple stakeholders) as an important and weighty element of the expert evidence submitted throughout the Examination by MCA as statutory authority.
- 5.2.192. The section discusses the same matters as in the sections above, but additional subsections are added to address policy compliance considerations and the ExA's own technical concerns about the Navigational Risk Assessment.
- 5.2.193. The ExA's process of consideration has been:
- First: to scrutinise, as an issue of foundational importance to its deliberations, the effects of the Proposed Development on navigation in the sea area adjacent to the TEOW and to what extent navigational safety would probably be compromised by reduction in sea room;
  - Second: to scrutinise the Navigational Risk Assessment (NRA) as the crucial input to the Applicant's EIA conclusions in the ES of no significant adverse effects to Shipping and Navigation, including to what extent the Applicant has taken account of input by locally experienced and expert stakeholders before and during the NRA Addendum process carried out during the Examination subsequent to the introduction of the SEZ as material change;
  - Third: to consider how the factors of perceived risk to navigational safety by prudent mariners would probably affect the use of shipping routes and pilot transfer operations in the immediate vicinity of the Proposed Development and consequential probable impact on ports and port operations served by those routes;
  - Fourth: to test the findings of the Examination against identified policy considerations in order to come to conclusions on Shipping and Navigation effects that will inform recommendations to SoS on the overall determination of the DCO application.
- 5.2.194. Therefore, the following considerations of foundational importance are considered by the ExA in sequence:

- Effects on sea room for safe navigation
- Navigational Risk Assessment introduction
- Consequence of incident occurrence
- Traffic growth projection and likelihood of incident occurrence
- Conclusions on navigational risk assessment including advice of MCA
- Societal risk and EIA conclusions
- Effects on pilot transfer operations
- Effects on shipping routes
- Effects on ports and port operations
- Policy considerations

### **Effects on sea room for safe navigation**

- 5.2.195. This following subsection reviews specific effects of the Proposed Development in relation to safe navigation due to compression of traffic in a reduced sea area to the west and north-west of the Proposed Development. The ExA comments on:
- the definition of adequate sea room for safe navigation for the types of activity taking place;
  - the reliability of expert witness opinions in particular over the most critical area of sea room, manoeuvring characteristics and visibility;
  - evidence submitted at the end of the Examination analysing accident and incident data and animation of vessel tracks for the busiest 24 hour period surveyed.
- 5.2.196. Marine navigation is a field in which timely judgement is of great importance in real time dynamic risk assessment, and where qualitative judgments soundly taken safeguard property, people and the environment from harm, including injury and loss of life at sea. In reaching conclusions about navigation safety therefore, considerable weight should be placed upon the body of expertise and experience of mariners active in these waters.
- 5.2.197. The Applicant has argued (see para 5.2.100 above) that it has followed and complied with Marine Spatial Planning guidelines for sufficient sea room for vessels passing in a straight line between the buoy and the extremity of the SEZ. However, the ExA finds that assessment of safe sea space should take account of context including turning manoeuvres, visibility and geographic constraints, not rely on rule-based computation alone.
- 5.2.198. The Applicant failed to address to the ExA's satisfaction the ExA's questions at ISH5 and ISH8 as to how much additional spatial allowance should be made for vessels turning around the buoy as well as other vessels crossing in the sea area, being a fishing ground and a location passed by a high density of service craft (see Figure 6 from the NRA Addendum [[REP4B-002](#)] showing surveyed vessel tracks by size and by type at Fig. 5.2.7 above).
- 5.2.199. Because of the continuing contention between IPs about the sufficiency of safe sea room, with experts for the Applicant reaching different conclusions from those reached by experts for the Ports and by the

statutory regulatory bodies, in relation to subject matter that is strongly reliant on the exercise of professional judgment, it has been necessary for the ExA to consider the reliability of expert witness evidence. As noted in Chapter 1 at paras 1.4.51 and 1.4.52, a PD was made to allow cross-questioning at ISH8. Having looked closely at both the quality of evidence submitted both orally and in writing by expert witnesses for navigation as well as at their respective credentials (qualifications and experience), the ExA finds the submissions by the Applicant's expert witness Capt. Moore at both ISH5 and ISH 8 and in subsequent WRs to assist it less than that of other expert mariners providing evidence to the Examination, on the basis of his more limited experience in relevant classes of vessel and in relevant local waters (in the Thames estuary and its approaches and in the vicinity of OWFs). Capt. Moore tended to de-emphasise the qualitative and experiential evidence of other ships masters (including Capt. Sime of LPC and Capts. Barker and Harris of TH as well as the evidence of Mr Jackson of ESL as a highly experienced pilot cutter coxswain), relying more substantially on theoretical assessment. However, in terms of forming a judgement about what is safe practice at sea, the ExA attaches considerable weight to the knowledge and expertise developed in local waters by these other experts.

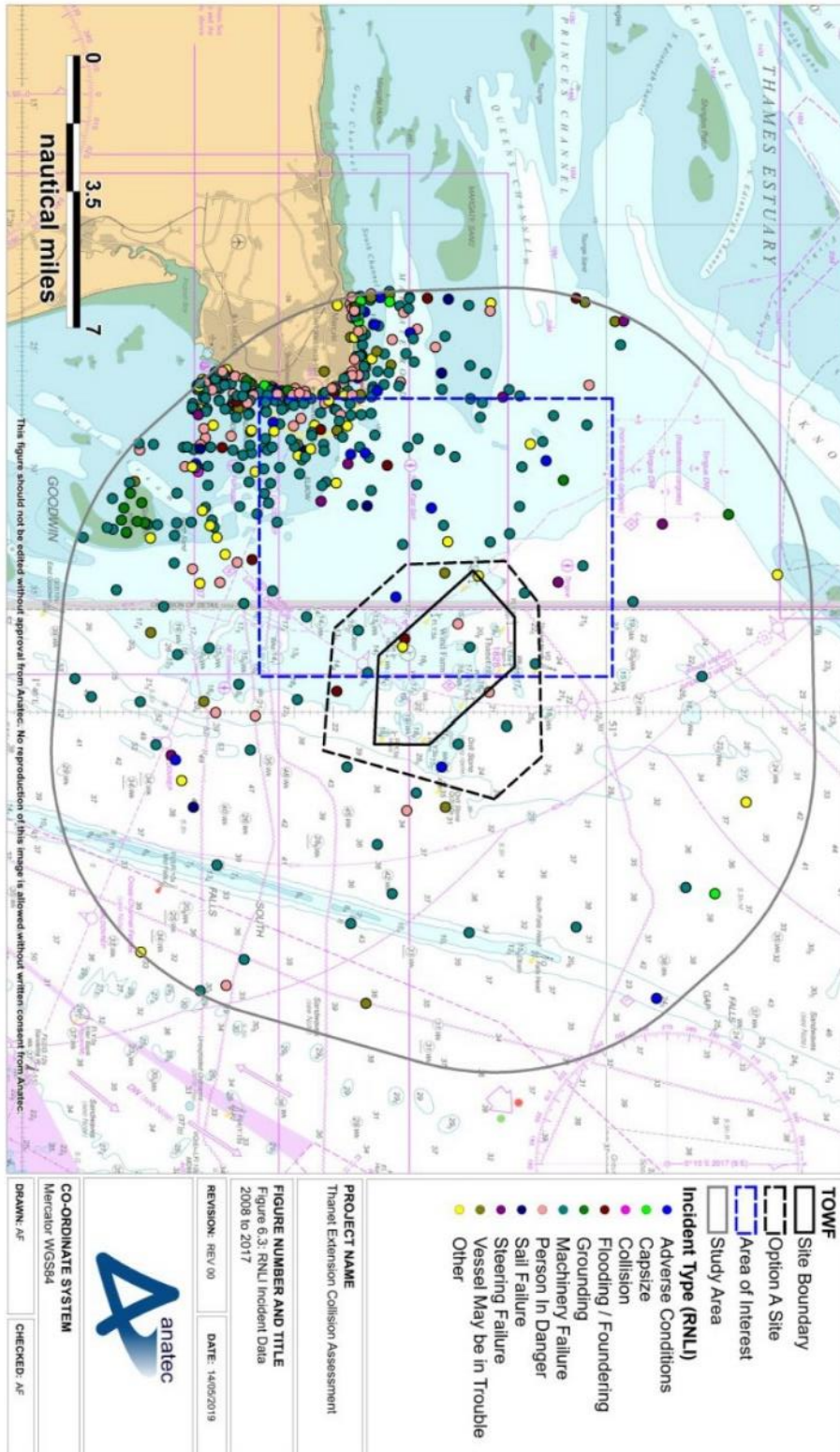
- 5.2.200. At [REP6-038] the Applicant disputes the evidence provided by LPC at [REP5-061] which explained manoeuvres of large and ULCS (Ultra-Large Container Ship) vessels to transfer pilots at NE Spit and criticised the credentials of the Applicant's experts in this regard. The submission states: *'The LPC are correct that Capt. Moore does not have the exact same experience as they state with regards manoeuvring large vessels close to windfarm and this is not disputed. This does not however mean that the opinion expressed by Capt. Moore is irrelevant... When employed as a PLA pilot predominantly using the NE Spit Capt. Moore regularly passed the Kentish Flats windfarm.'* The ExA notes that commercial vessels under pilot are required to navigate past the Kentish Flats wind farm (located on fig 64 NRA [APP-089]) within a buoyed navigation channel which does not involve pilot transfer or turning manoeuvres in close proximity to the windfarm. Furthermore, Capt Moore has not piloted or commanded very large vessels of the type causing greatest concern over adequacy of sea space. The ExA does not see this experience as equating with the circumstances for masters of vessels that Proposed Development would give rise to.
- 5.2.201. Whilst the ExA notes that Capt. Sime's representations show an incomplete grasp of the planning terminology used in the Examination and some errors in written and figured references to RLB, SEZ and Construction Safety Zones the ExA make allowance for the limited time and resources available to LPC to prepare diagrams and written submissions. The ExA finds that Capt. Sime as an active Class 1 Unrestricted London Pilot qualified as a Havens pilot ULCSs to be a credible witness on maritime and navigation matters. The ExA found his oral submissions coherent, reliable and understandable.
- 5.2.202. Capt. Moore, engaged by Marico as expert witness for the Applicant, is a Dover-based Cross-Channel ferry master with limited former experience



of navigating in the close vicinity of wind farms in the Thames estuary as a Class 4 junior pilot before the Thanet Offshore Wind Farm was constructed. The ExA considered Capt. Moore's representations and answers to questions at ISHs to be of a more limited nature in respect of important qualitative judgements relevant to assessing the navigational safety of particularly larger vessels in these waters. It follows that the ExA remained concerned that elements of his responses to actions following ISHs were unsatisfactorily substantiated with regard to the engagement of qualitative and experiential judgment and again the ExA accords them limited weight for this reason.

- 5.2.203. In [\[REP4C-012\]](#) LPC submits that *'At a recent meeting of the LPC where the content of this submission was discussed it was estimated that between the 6 members present we had over 3,000 boarding and landings at the NESP which have been conducted in all conditions of weather, tide and traffic density on all classes and types of vessel.'*
- 5.2.204. The ExA notes concerns raised by pilots over effects of development causing obstructions to visibility of other vessels.
- 5.2.205. In [\[REP1-024\]](#), responding to responses on ExA's first Written Question 1.12.28 about RYA's concern that the Proposed Development may cause *'...echoes on radar which requires users to reduce gain, thereby losing smaller targets (i.e. small boats)...'*, the Applicant referred to section 7.9 of the NRA and commented: *'The concerns raised by the RYA ... were noted albeit no evidence has been made available to suggest extant issues or effects as described with the existing wind farm...'* However the ExA notes that LPC subsequently provided evidence at [\[REP5-061\]](#) which elaborated with a number of images on the increased hazard to the north and north-west of the Proposed Development, including potential difficulties of visibility by eye and by radar cause by the projecting corner of the proposed array despite the introduction of the SEZ.
- 5.2.206. It is not clear to the ExA that the Applicant has properly addressed this LPC D5 representation (discussed at para 5.2.204 above) in subsequent submissions. The ExA therefore finds that the evidence presented by LPC outweighs the assertions of the Applicant and its expert witnesses, to the extent that it seems probable that the RYA concern is justified and that the existing TOWF does require navigators to change the gain on their radar and that this may reduce the range at which smaller targets are acquired on radar.
- 5.2.207. However, the ExA also agrees the case made by the Applicant that the TEOWF has WTGs (albeit much taller) at much greater spacing than for TOWF and therefore the additional effects of Proposed Development on radar visibility would be proportionately lower and that no IP has submitted evidence to the contrary.

Figure 5.2.9: RNLI Incident Data Between 2008 and 2017<sup>61 62</sup>



<sup>61</sup> Reproduced from Applicant’s documentation: do not scale. Refer to original.

<sup>62</sup> Fig. 6.3: Anatec collision assessment report [[REP6-064](#)]

- 5.2.208. The ExA now considers aspects of the additional evidence submitted very late in the Examination at Deadline 6 providing additional study of collision risk, plus analysis of vessel traffic on the busiest 24-hour period surveyed which was submitted at Deadline 8 and has therefore not received response from IPs and OPs.
- 5.2.209. The ExA notes that the Anatec collision assessment Report [[REP6-064](#)] at section 6.1 refers to MAIB incident data from 2005 to 2014, and notes '*In terms of collision incidents, a total of four were recorded by the MAIB as occurring within the study area...*'. Whilst the ExA notes that none of these collisions took place to the immediate north-west of the wind farm, the ExA also notes that at Figure 6.3 of this Report [[REP6-064](#)] (Reproduced above as Fig 5.2.9), RNLi incident data between 2008 and 2017 shows over 30 incidents of machinery failure and more than 3 steering failures in the area of immediate interest directly to the west and north west of the wind farm (much higher than the incidents plotted in the MAIB 2005-2014 data of Figure 6.1 in [[REP6-064](#)]) which may be seen as evidence supporting the IPs stated concerns over the cumulative levels of hazard in this sea area.
- 5.2.210. In addition, the Applicant's 'busiest day' traffic survey animation for 20 February 2018 [[REP8-008](#)], discussed at para 5.2.75 above, was submitted to address IP concerns over the adequacy of survey data and its interpretation. The Applicant's commentary focuses on pilot transfer operations at the NE Spit PBD but the ExA notes the additional relevance and importance of what is revealed by observation of vessel movements in other critical areas that are subject to reduction of sea room by the Proposed Development, as follows in para 5.2.211 below.
- 5.2.211. Examples that do not appear in the Applicant's commentary in [[REP8-008](#)] but which the ExA considers to raise concern are as follows.
- Between 0630 and 0730 a vessel between 180m. and 240m. LOA leaves the Princes Channel via a deep-water gap in the NE Spit, lands a pilot at the NE Spit PBD then takes a wide sweep eastwards well inside the area of the Proposed Development before turning southwards to the Dover Strait well outside the 10m. charted depth contour east of the NE Goodwin cardinal buoy.
  - Between 1025 and 1040 a vessel between 120m and 180m LOA is leaving Princes Channel eastwards passing the Tongue PBD just over 1 nm. to the northwest of the Proposed Development SEZ but does not appear to be landing a pilot; however, in the same period a smaller vessel between 90m. and 120m. LOA has just landed a pilot at NE Spit PBD and then leaves to the north-east turning to the east about 0.5nm from the northern edge of the existing wind farm in order to avoid a head-to-head meeting with another vessel approaching from the east and turning to dip down to the NE Spit PBD. The two vessels cross at 1036 at a separation of less than 0.5nm.
  - In addition, at 1042 a vessel between 120 and 180m. LOA suddenly appears on the AIS plot (this is mysterious but may be because its AIS had just started functioning) at the midpoint between the NE Spit

Racon buoy and the Existing Wind Farm boundary just over 1nm. ahead of another south-west bound vessel. This new vessel proceeds south-west towards the NE Spit PBD at a separation of just over 1nm. This seems to the ExA to be a hazardous combination of movements that will have required highly competent watchkeeping and avoidance action to avoid collision and finds it a cause of concern that the Applicant has not included it in its commentary.

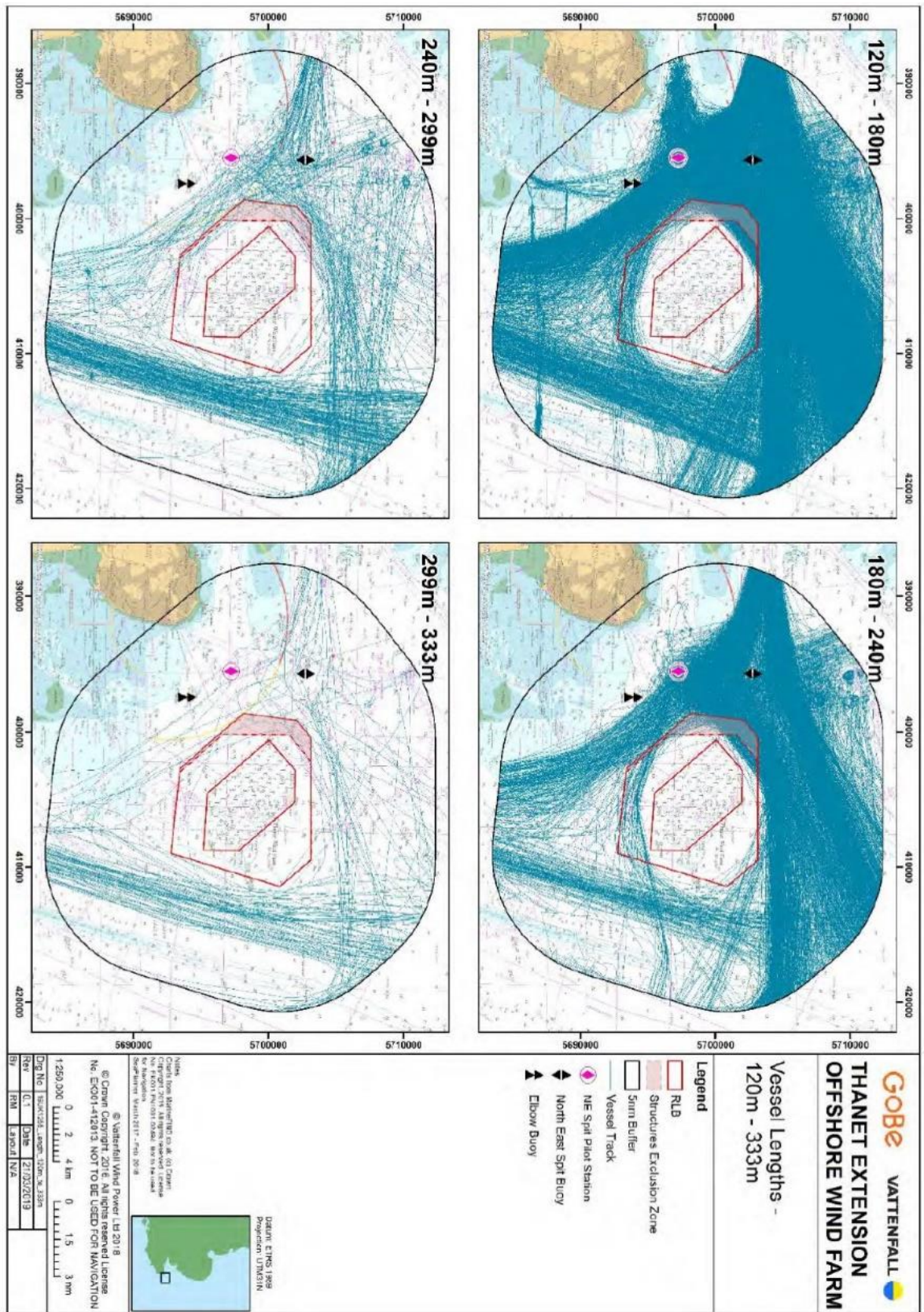
- At 1106 there are 4 vessels including one between 180 and 240m. LOA plus one pilot launch all within 0.5nm. of the NE Spit PBD. The commentary and screenshot image of the positions at 1100 submitted by the Applicant at pages 17-18 of [[REP8-007](#)] do not illustrate this extreme compression, which the ExA finds to be of concern.
- Between 2300 and 2345 a vessel between 180 and 240m. LOA approaches from the east and to the south of the Tongue PBD, crossing the extremity of the proposed SEZ; however an outbound vessel between 120 and 180m LOA is concurrently passing to the north-west and has to pass to the south of the inbound bigger vessel, taking it inside the proposed turbine array area and crossing at a separation of about 0.3 nm. Again, the Applicant does not mention in its commentary this crossing encounter on reciprocal tracks on the perimeter of the constricted area of the Proposed Development, well inside what would be a 1nm safety buffer zone separating vessels from structures.

5.2.212. These tracks discussed above seem to the ExA to be entirely consistent with the high density of tracks surveyed that curve around within 0.5 to 1.0 nm. of the north-west corner of the existing wind farm to and from the NE Spit PBD.

5.2.213. The Applicant's focus through the Examination has been on the less complex area of sea further to the south-west in the immediate vicinity of the PBD itself and not on the sea room between the wind farm and the NE Spit Racon buoy, where traffic would become compressed by the Proposed Development requiring a wider sweep and a tighter turn.

5.2.214. Section 1.4 of the Applicant's introduction to the Anatec collision assessment Report [[REP6-064](#)] states that '*the inshore area is not on the limited [sic] of tolerability*'. The ExA takes the view that the vague 'inshore area' is too broad a study area when the primary focus of safety concern emerged during Examination as the sea area to the north-west between the Proposed Development and the NE Spit where vessel movements are particularly complex and constrained as discussed at para 5.2.196 above.

Figure 5.2.10: Surveyed Tracks of Vessels by Length<sup>63 64</sup>



<sup>63</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>64</sup> page 16 of Annex D to the NRA Addendum [[REP4B-006](#)].

- 5.2.216. The ExA notes that the NE Spit buoy cannot be moved because it marks the extremity of the Spit itself; and that vessels crossing the main shipping routes to and from the Tongue deep-water anchorage can be seen on this set of AIS tracks and further increase the complexity of navigation in this sea area; see also para 5.2.198 above.
- 5.2.217. Careful consideration also needs to be given to the evidence given that there is a probable increase in larger vessels of deeper draught seeking to transfer pilots at NE Spit in preference to the Tongue PBD or the already very heavily used Sunk Pilot boarding area, discussed at para 5.2.169 above. Such vessels will not be able to cross the NE Spit and having a larger turning radius will therefore need to transfer pilots closer to the NE Spit Racon buoy and will probably therefore further compress traffic in this constrained area of sea to the north west of the Proposed Development.
- 5.2.218. Examples of dip-down manoeuvring constrained by vessel depth and turning characteristics, captioned 'Vessel Lengths 299m-333m' and 'Vessel Lengths 240m-299m', are illustrated on page 16 of Annex D to the NRA Addendum [[REP4B-006](#)] as shown at Figure 5.2.10 above.
- 5.2.219. The introduction of an SEZ as a material change at Deadline 4 at the end of March, more than halfway through the Examination, was welcomed by some IPs and OPs, but other IPs and OPs felt it to be insufficient to mitigate additional risk from the Proposed Development to ALARP; some considered that it was poorly defined and should have been put forward as a change to the order limits Red Line Boundary. The extent of the SEZ proposed had not been discussed with stakeholders in advance and was well short of the reduction in Red Line Boundary that IPs and OPs had submitted was necessary to satisfy them on safety concerns.
- 5.2.220. IPs and OPs expressed particular concern over additional safety effects to shipping and navigation during construction (which is agreed by the Applicant to be the period where risk to navigational safety is most increased) because the SEZ would be reduced by a (rolling) 500m. construction safety zone leaving significant additional encroachment into sea room, at least in the space between the Proposed Development and the NE Spit Racon buoy which marks the end of the spit itself, and therefore increasing compression of traffic in this space and consequential levels of risk to shipping and navigation.
- 5.2.221. The probable navigational safety effects of such compression can be inferred from the surveyed vessel tracks Figure 6 in the NRA Addendum [[REP4B-002](#)] reproduced as Figure 5.2.10 and discussed in detail at 5.2.104 above.
- 5.2.222. The ExA finds that the IPs and OPs have individually and collectively made a convincing case (reviewed at 5.2.157 above and its subsequent paragraphs) that the Proposed Development would give rise to additional '*danger to navigation*' in the sea area adjacent, primarily due to compression of traffic in an area of general navigation already characterised by constrained sea room accommodating complex traffic

patterns including turning manoeuvres by large commercial vessels to transfer pilots, combined with the 'cumulative effects' of Wind Farm Service Vessel traffic serving not only Thanet OWF but also other OWFs including the London Array and other crossing traffic including recreational and fishing vessels.

- 5.2.223. Whether or not there will be growth in large and ultra-large vessel traffic and the need to reduce pressure on congested pilot transfer sea space at Sunk PBD, evidence has been received that large commercial ships of 333m LOA and deep draught already use the NE Spit to transfer pilots and would probably have safety of navigation compromised by the effects of the Proposed Development.

## **Navigational Risk Assessment**

### **Introduction**

- 5.2.224. Navigation Risk Assessment (NRA) is a necessary and foundational input to the EIA. How an NRA is carried out is subject to guidance from the MCA as the competent statutory body. Its guidance is documented in the MGN543 (M+F) guidance, discussed at para above 5.2.76 and following paragraphs above. There are proportional and discretionary components and steps within the recommended NRA method that need to be agreed between the MCA and an Applicant/promoter. At the conclusion of the NRA process, the MCA makes recommendations to the decision-maker on the development being promoted.
- 5.2.225. The Applicant's NRA is reported in the Environmental Statement (ES) and submitted with the application as [\[APP-089\]](#). ES Chapter 10 'Shipping and Navigation' [\[APP-051\]](#) summarises the output of the NRA and assesses the impacts of the Proposed Development on Shipping and Navigation.
- 5.2.226. As discussed at para above 5.2.76 and following paragraphs above, the NRA followed the MGN543 (M+F) guidance. A Pilotage Study and Pilot Transfer Bridge Simulation (PTBS) [\[APP-090\]](#) were carried out as an important component input to the NRA.
- 5.2.227. During the Examination, following the Applicant's introduction of a Structures Exclusion Zone (SEZ) as a risk control, the Applicant conducted a risk assessment workshop with stakeholders and then submitted a NRA Addendum [\[REP4B-002\]](#) at Deadline 4B on 05 April 2019 along with an ES addendum [\[REP4B-010\]](#) and other supporting documentation forming a material change request. The proposed SEZ was reflected in a revised dDCO [\[REP4B-021\]](#).
- 5.2.228. In dealing with risk assessment the ExA is conscious of the probabilistic nature of such assessment and therefore the ExA's responses and conclusions are necessarily conditioned accordingly and couched as necessary in terms of 'probable' or 'likely' effects. It is also aware of the need for collaborative sharing of professional judgments about the inputs to and outcomes from the assessment process.

- 5.2.229. Whilst a great deal of additional evidence has been submitted to Examination by the Applicant, IPs and OPs, the ES and the NRA which underpins it are the 'bedrock' on which the Applicant's DCO application is founded. The reliability of the NRA and its Addendum, and the assumptions and inputs on which these are based, are therefore at the heart of the ExA's considerations of its recommendations to the SoS.
- 5.2.230. During the Examination, evidence was received on navigational risk assessment carried out by the PLA (in their capacity as harbour authority and provider of pilot services) on the use by large vessels of the NE Spit pilot boarding station; and a 'sense-check' assessment of hazard scores following the stakeholder workshops held midway through the examination. The ExA has considered this evidence but finds that although it provides some useful context on the baseline risk to navigational safety presented by the geographical and bathymetric constraints in that sea space together with the spatial constraints of the existing TOWF, the obligation nevertheless remains with the Applicant to satisfy the MCA as regulatory authority on the adequacy of Navigational Risk Assessment for the Proposed Development.
- 5.2.231. The Applicant has made many representations to justify its risk assessments of all major hazards as ALARP (therefore tolerable as mitigated) by breaking down the individual hazard scores of the NRA.
- 5.2.232. Despite the introduction of an SEZ during the Examination and subsequently holding a shipping and navigation hazard identification workshop (more than two-thirds of the way through the Examination) to reassess with stakeholders in detail the four top hazards, the stakeholders (including MCA as statutory authority) remained unable to agree with the Applicant that the increased navigation risk of the Proposed Development is ALARP and therefore acceptable or tolerable.

### **Consequence of incident occurrence**

- 5.2.233. This subsection reviews the NRA and NRA Addendum rating of consequence of hazard occurrence.
- 5.2.234. In [\[REP7-042\]](#), LGPL/PoTLL reports from the stakeholder workshop: *'all IPs present asserted and agreed that a glancing blow between a Class 1 / 2 vessel and a fishing vessel would almost inevitably result in the sinking of the fishing vessel. This was therefore considered within the range of most likely outcomes.'*
- 5.2.235. As described in greater detail at para 5.2.177 above, in [\[REP7-043\]](#) PLA/ESL also criticise the NRA Addendum scoring: *"Although the impact to stakeholders, specifically to vessel operators, was considered for the "worst credible hazard", it was not considered in terms of the most likely hazard. A collision between two Class 1 vessels,...would incur delays [as] a result of such an incident, for inspections/repairs and this could easily result in financial consequences to those vessels amounting to more than £100,000... Scores were not considered in combination...'* The IPs contended that if consequences to stakeholders and property were properly re-assessed to be of higher than £100,000 financial impact, the



consequence should move up at least one level that would render that hazard score above ALARP and therefore intolerable in the risk assessment methodology defined in the NRA. To the ExA's mind, on the face of it the IP and OP reasoning seems reasonable and robust, and the counter-position of the Applicant's risk consultant, both during ISH5 and subsequently, remained unclear and unsatisfactorily substantiated.

- 5.2.236. In its response at D8 [[REP8-007](#)] the Applicant disputes this alleged lack of workshop discussion of stakeholder consequence of 'most likely' hazard incidence, and states: *'The Applicant does not consider the realisation of "Most Likely" hazard occurrence to generate a Stakeholder / Business consequence scores [sic] of £100,000 to £1,000,000. This level of consequence would ordinarily be related to more severe hazard magnitudes, and is typically considered within a less commonly occurring "worst credible" category.'* This seems to the ExA to highlight at least the lack of agreement between IP and the Applicant and also represent a false argument by the Applicant: if the stakeholders consider that consequence to stakeholders and property would be in the range £100,000 to £1,000,000 for most collision incidents of this Hazard class then it should logically be rated a 'most likely' occurrence and this would significantly affect the hazard scoring. It seems unreasonable for the Applicant to unilaterally hold that this level of consequence *'would ordinarily be related to'* the more infrequent 'worst credible' occurrence.
- 5.2.237. As noted at para 5.2.86 above, although the Applicant did not revise the NRA Addendum to reflect this contested consequence rating, the algorithmically computed scores would rise only marginally and still be within the ALARP range. This matter of low scoring sensitivity was questioned at ISH8 but not answered to the ExA's satisfaction.
- 5.2.238. On the balance of argument it therefore seems probable to the ExA that a 'most likely' outcome of a collision between two Class 1 or 2 vessels would (as claimed by IPs) result in aggregate financial consequences of over £100,000 and therefore fall to be considered in a higher consequence category that would take the risk computation above the band of ALARP/'tolerable with controls' and therefore would be intolerable.

### **Traffic growth projection and likelihood of incident occurrence**

- 5.2.239. The Anatec collision assessment Report [[REP6-064](#)] states: *'As indicated by Figure 5.3, the majority of the increase in risk is estimated to occur to the west/north-west of the Option A site. This increase was due to the deviation of regular routed vessels currently intersecting the Option A site further west, increasing the density of traffic and thus the collision risk...'*
- 5.2.240. The Applicant justifies in a dedicated paper [[REP7-026](#)] its projection of 10% growth in future baseline traffic over the life of the Proposed Development. Several IP's/OPs have vigorously contested this figure as being substantially too low. For example in [[REP7-043](#)], the PLA and ESL do not agree that 10% future traffic growth is suitable for this local area. In [[REP4C-012](#)] LPC argues for a relatively larger growth in large vessel

traffic close to the TOWF, of importance and relevance to the navigational risk assessment as noted at para 5.2.144 above. PoTLL/LGPL contested in a number of submissions this 10% growth assumption, summarised in their closing position [[REP7-042](#)] and discussed at para 5.2.142 above.

- 5.2.241. A particular instance where this traffic growth assumption is of importance and relevance is in the assessment of likely occurrence of collision between vessels.
- 5.2.242. The Applicant has assessed in the NRA and the NRA Addendum that the Likelihood of collision between commercial vessels would increase as an effect of the Proposed Development. This is confirmed by the Anatec Report [[REP6-064](#)].
- 5.2.243. The ExA acknowledges that Section 5.3 of the [[REP6-064](#)] Anatec collision assessment Report states: *'Changes in traffic trends are difficult to predict, and therefore a flat 10% increase has been considered. This value is in line with that assumed for the larger majority of NRAs undertaken for North Sea offshore renewables projects... Assuming future case traffic levels, it was estimated that post extension, a vessel would be involved in a collision once every 38 years, which represents an increase of 25% over that of the base case pre extension scenario.'*
- 5.2.244. The ExA notes that there has been no opportunity for the Anatec Report [[REP6-064](#)] to be examined orally since submission at Deadline 6; therefore it is not clear how this figure of 38 years is derived, nor what type of vessels it refers to, and the ExA has seen no interpretation of this figure that it can rely on. The ExA also notes some doubt on the interpretation in the Anatec Report about the incidents reported to MAIB compared with those recorded by RNLI, as discussed at para 5.2.196 above.
- 5.2.245. The assessed likely frequency of occurrence of collision of a Class 1 or 2 vessel would be substantially less than 38 years if the regional figure of 10% growth in baseline shipping traffic over the life of the Proposed Development taken by the Applicant significantly understates the relevant traffic growth that can be expected in the sea area west and north-west of the Proposed Development, as submitted in representations by IPs and OPs.
- 5.2.246. The Applicant's [[REP6-064](#)] introduction to the Anatec Report states *'When considering a 10% increase in traffic, the affect [sic] attributed to TEOW was also a 4% increase in collision rates, noting an overall 25% increase. This is still considerably below the increase attributed to inherent likelihood scores in the NRA Addendum which were considered by IPs to be 50% more likely.'*
- 5.2.247. In fact, in the NRA and NRA Addendum, the risk score of collision between large commercial vessels varies with the nature of the second vessel involved in the collision. The NRA Addendum [[REP4B-002](#)] at para 128 states: *'in the most onerous case this involved the doubling of*

*hazard likelihood for the Class 1 or 2 vessel collision hazard from a 1 in 40 year occurrence, to a 1 in 20 year occurrence for the most likely outcome of a collision...'*

- 5.2.248. The ExA therefore understands the likelihood of collision in the vicinity of the Proposed Development to occur not more infrequently than every 20 years.

**Navigational Risk Assessment conclusions including advice from MCA**

- 5.2.249. This subsection considers specific conclusions of the NRA and the NRA Addendum and the relationship to the EIA assessment of risk as concluded in the ES which the ExA notes does not use the same overarching risk ratings as the NRA.
- 5.2.250. The ExA notes that the NRA methodology used by the Applicant was agreed as suitable for purpose by the MCA as relevant statutory authority. However, several IPs contested the scope and effectiveness of stakeholder input to the NRA, in particular the validity and conclusions of a simulation study carried out to test feasibility of ongoing pilot transfer operations at NE Spit as one of the main component methods of the NRA.
- 5.2.251. The ExA also draws attention to the difference in how risk is assessed in the EIA with a significantly different risk matrix used in the ES to that used in the NRA.
- 5.2.252. The simulation study referred to above (a Pilot Transfer Bridge Simulation or PTBS) was carried out as one of the stages of the NRA and the Applicant explained (see para 5.2.77 above) that its purpose was to test feasibility of pilot transfer operations for a selection of vessel sizes and types when constrained by the Red Line Boundary order limits of the Proposed Development at PEIR stage. The ExA notes that that 14 pilot transfers were simulated and one of these was a 'marginal fail' due to encroachment within precluded sea space after the completion of pilot transfer.
- 5.2.253. However as discussed at para 5.2.128 above IPs and OPs contested strongly the validity of the PTBS as carried out to support risk assessment, alleging inappropriate framing of the study objectives and criteria including vessel types and sizes, experience of operatives, lack of modelling of emergency situations and non-extreme Metocean conditions. The ExA finds that the IP and OP objections to be valid and discounts the findings of the PTBS for anything other than testing feasibility of pilot operations in benign operating conditions and for certain types of vessels of 240m LOA or smaller. The ExA accepts the evidence submitted by several IPs and OPs that such 240m LOA vessels have significantly greater ability to manoeuvre to avoid potential collision when vessels meet than the largest vessels that use the sea space immediately to the north and west of the Proposed Development and whose frequency of use of this sea space is, on the basis of evidence presented, likely to increase, particularly when adverse Metocean

conditions prevent or deter use of other pilot boarding stations in the Thames estuary and its approaches.

- 5.2.254. As noted at para 5.2.90 above the Applicant also suggested late in the Examination that a further simulation study might be valuable post-consent to validate risk controls and '*...to mitigate any increase in risk specifically for large vessels utilising the North East Spit for pilot transfer...*'. IPs and OPs disagreed that it would be of value post-consent and submitted that if it were to be carried out it needed to be done as a crucial input to Navigational Risk Assessment. Due to the lateness in the Examination at which the prospect of a further simulation study was raised, the ExA declined to make a procedural decision calling for such a study to be carried out. At this point in the Examination, the ExA took the view that the navigational effects of the Proposed Development had to be evaluated and assessed in the light of the prepared and submitted evidence. The ExA took the view that to support the submission of a further simulation, in circumstances where the adequacy of the existing evidence base was open to substantial question, did not appear either to assist the SoS to make a decision or to be a wise application of the Applicant's resources.
- 5.2.255. The ExA considers also that simulation to validate risk controls post-consent would not in itself be effective mitigation of risk and has therefore made no proposed change to the DCO in this regard. Furthermore the ExA recommends that should the Applicant propose or submit any further simulation report subsequent to the close of the Examination then any such simulation study would need to be structured as an integral element of comprehensive revision of the NRA; and to be effective in informing risk assessment the scoping, briefing, execution and evaluation of such a simulation study would need to be managed and audited by a body or bodies independent of the Applicant and IPs and conducted in close co-operation with all relevant stakeholders to the satisfaction of the MCA.
- 5.2.256. The ExA has considered very carefully all the evidence put before it about whether the increased navigation risks resulting from the Proposed Development have probably been mitigated to As Low As Reasonably Practicable (ALARP); or, in EIA terms, that the navigational risk is tolerable if appropriate mitigation is put in place.
- 5.2.257. The Applicant's main case is that, using their consultant's proprietary software, ratings of the main identified hazards for Likelihood and Consequence as baseline risks, the inherent risks of the Proposed Development and Residual Risks after mitigation were all computed by algorithm within the Marico proprietary HAZMAN software to fall numerically within the band of ALARP and therefore to be acceptable, both within the base case NRA and for the NRA Addendum for the scheme as mitigated by SEZ. The MCA as well as other IPs and OPs contested not only this conclusion but also the ratings of some of the hazards, therefore casting doubt on the reliability of computed risk scores and the conclusions reached by the Applicant. The Applicant identified in the NRA additional risk controls that might be considered to

further mitigate risk to lower down the ALARP scale. It concluded in the NRA that such additional controls were not justified, although no substantial cost-benefit analysis was presented by the Applicant in the application or the Examination to substantiate the claim of having mitigated or controlled risks to ALARP.

- 5.2.258. As noted in 5.2.92 above, late in the Examination the Applicant submitted [as annex to [REP6-064](#)] a further Collision Assessment Report, undertaken by a new, independent consultant (Anatec). Whilst this was undertaken on a different basis to the assessment carried out as input to the ES, it was initiated by the Applicant to examine changes in probability of encounters between vessels following the introduction of an SEZ within the Proposed Development. However, the assessment was done too late to inform the NRA Addendum submitted at Deadline 4B, and also too late to be fully responded to by IPs and OPs and therefore the weight that can be attributed to it as standalone evidence has to be limited. It is difficult to correlate its findings with the original NRA.
- 5.2.259. The SEZ can be considered to be a risk control or mitigation that has reduced computed risks to lower on the scale of tolerable with controls. In the NRA Addendum following the introduction of the SEZ additional risk controls were again discussed but the IPs and OPs also contested the validity of additional controls put forward in the NRA Addendum. In ISH8 Dr. Rogers, the expert consultant acting for Marico on behalf of the Applicant, confirmed under cross-questioning that in his opinion the SEZ was not a necessary mitigation or risk control as the NRA had itself concluded that all risks were ALARP and therefore acceptable. This is an important observation in the ExA's view, as it highlights that a key member of the Applicant's assessment team even at this stage was not prepared to accept the contributions of equivalently experienced professionals making the judgment that this level of reduction had not been reached. The evaluations in the NRA and the NRA Addendum rely on significant elements of professional judgment within the Applicant's team, but that judgment itself placed limited weight on the possibility that its own initial conclusions might be wrong. It follows that judgments about risk and mitigation made by the Applicant's team did not take sufficient account of judgments by other expert maritime stakeholders with substantial experience relevant to hazard assessment in the local context of which they should have taken fuller account.
- 5.2.260. Notwithstanding the energetic efforts of the Applicant through the latter part of the Examination to further mitigate the effects of the Proposed Development on shipping and navigation, MCA's final position stated in [[REP6-087](#)] was: '*[w]e remain concerned about the consequence of an incident in this highly complex area for navigation....Based on the above concerns the MCA is unable to agree that the proposed project is acceptable with regards to the safety of navigation...*'; and (as discussed in 5.2.141 above) the MCA Additional Submission accepted just before the close of the Examination as [[AS-025](#)] clarified that MCA '*did not say the baseline risk scores were accepted*'; and '*MCA does not agree with the embedded and additional risk control measures and is unable to accept ALARP has been reached.*'.

5.2.261. The ExA puts very substantial weight on the qualitative judgement of the MCA as statutory authority responsible for marine safety matters. The MCA's judgement was in summary<sup>65</sup> as follows:

- even with the introduction of the SEZ, the Applicant has failed to demonstrate convincingly through the NRA and NRA Addendum that the overall risk to safety of navigation due to the impact of the Proposed Development on safe sea room has been reduced to ALARP;
- equally the Applicant has failed to demonstrate such that no further risk control or mitigation (over and above the SEZ) is practicable and proportionate;
- the Applicant has not taken sufficient account of weighty opinion in the form of a general consensus from other expert bodies on these matters; and
- therefore the MCA is not prepared to advise the decision-maker that the conclusions of the NRA are acceptable.

5.2.262. The ExA makes special note of an Additional Submission [[AS-025](#)] from the MCA (accepted after Deadline 7 at the discretion of the ExA), that set out clarifications on the Applicant's Deadline 7 responses to IP submissions at Deadline 6. The MCA's cover letter noted: '*[t]here continue to be multiple occasions where the applicant has misinterpreted MCA responses or taken them out of context and provided their own summaries of our position to which the MCA has not intended. This could be misleading for the ExA*'. The main points of concern are noted as follows:

- First, MCA cautions use by the Applicant of reference to '*as agreed in the minutes of...*' to support their case, pointing out that MCA does not necessarily endorse or agree statements recorded in minutes on which they have not commented.
- Second, MCA reiterates that it has made clear throughout the Examination that they provide guidance on safe navigation for offshore windfarms to the responsible authorities and that '*the views of the IPs must be taken into account as part of MCA assessment to ensure local knowledge and local operational experience are included*'.
- Third, MCA records that it has not received feedback from the Applicant on 'whether they intend to accommodate our amendment requests for safety of navigation purposes and in order to maintain our SAR obligations as per MGN 543'.

5.2.263. As an annex to [[AS-025](#)], MCA submitted a tabulation of examples of matters requiring clarification or correction, including:

- A misinterpretation of what was agreed in the SoCG about acceptability of temporary safety zones within an SEZ;
- Provision of a turbine layout plan 'is not in itself a mitigation measure for reducing risk'

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<sup>65</sup> For detailed reportage of the MCA position see para 5.2.141 with additional relevant evidence summarised in para 5.2.250 and following paragraphs.

- MCA does not agree that early commitment to two lines of orientation is an additional risk control measure;
- MCA 'does not consider Table 22 of the NRA to be a Cost Benefit Analysis and it is therefore not possible to agree with it';
- The Applicant's statement that MCA is understood 'to mean that the baseline risk scores are acceptable' is a misinterpretation and 'MCA did not say the baseline risk scores were accepted';
- MCA states that '[q]ualitative judgement is evidence' in rebuttal of the Applicant's rejection of IP's 'qualitative judgements without evidential basis';
- MCA questions how risks 'can be judged to be as low as reasonably practicable when the risk controls measures are not agreed';

5.2.264. The Applicant responded to this MCA Additional Submission [[AS-025](#)] by letter of 11 June 2019 [[AS-027](#)] noting that the Applicant has sought to consult regularly with the MCA and that minutes have '*always been sent to the MCA for comment and agreement to ensure they are an accurate reflection of what was discussed*' and '*where the Applicant has agreed a matter with a statutory consultee it is not unreasonable to present that in submissions as statement of fact.*'

5.2.265. The ExA has also taken note of a set of disputed minutes of a meeting to progress SoCGs between the Applicant and MCA and Trinity House (TH) on 4<sup>th</sup> Oct 2018 (after the application was submitted and accepted). These minutes were submitted by the Applicant to the Examination in [[REP1-086](#)]. MCA and TH drew attention to:

- multiple records of agreement that are disputed as unclear or incorrect;
- criticisms of inadequate time to consider presentations before meeting; and
- comment that the implication that the Applicant has gone beyond what is required by MGN543 is misleading and in the MCA's opinion the amount of work required by MGN543 is proportionate to '*...the impact...and... concerns raised by stakeholders*'.

5.2.266. The ExA considers this MCA submission [[REP1-086](#)] to be of relevance and importance due to the fact that it highlights comments from both TH and MCA (as tracked changes to the minutes) which illustrate that substantial stakeholder disagreement had been raised during the preparation of the NRA that then formed the basis for the ES and the application for DCO consent, but that disagreement had not been diligently and effectively processed into the evaluations that followed. This is illustrative of circumstances in which (for whatever reasons) the Applicant expert team was not fully and seriously engaged with issues being brought to the assessment process by professional stakeholders. These are circumstances that appear to have persisted from early in the preparation of the NRA, through to the end of the Examination process.

5.2.267. Despite a material change and additional risk assessment having been proposed by the Applicant midway through the Examination, the Applicant's conclusions regarding navigational risk being at an ALARP

level remained vigorously contested by IPs, including the MCA, at the conclusion of the Examination.

- 5.2.268. With the exception of the post SEZ Collision Assessment [[REP6-064](#)] commissioned by the Applicant from Anatec at a very late stage in the Examination, the ExA understands that the Applicant did not conduct any independent review of its NRA or its NRA Addendum inputs or conclusions and as stated by PLA at 5.2.180 above. Review (whether for Quality Assurance or for Risk Assessment itself) appears to have been undertaken by employees of or consultants to Marico Marine, the firm that was engaged by the Applicant to prepare the NRA and NRA Addendum. In its answer to ExA WQ 3.12.2 the Applicant confirmed that the NRA was reviewed by Dr Ed Rogers and Capt. Paul Fuller and authorised for release by Mr. Jamie Holmes; the NRA Addendum was reviewed by Mr John Riding, Senior Partner of Marico with independent review by Capt. Simon Moore. The ExA finds that Capt. Moore is not an independent reviewer as he is employed by Marico as an expert mariner consultant. Capt. Paul Fuller is a Principal Consultant with Marico Marine. Dr Rogers was the Marico Project Director for the NRA and subsequently left the employ of Marico but was thereafter employed as an expert risk consultant throughout the Examination and in that capacity conducted the stakeholder workshops and the primary inputs to the NRA Addendum.
- 5.2.269. MCA, TH, PLA and other IPs and OPs submitted forcibly that risk assessment cannot and should not rely on quantitative outputs alone; and that qualitative judgement of expert stakeholders must be considered to assess whether risks are acceptable or tolerable with mitigation.
- 5.2.270. Particular weight needs to be attributed to the qualitative judgement of the MCA, as statutory authority responsible for marine safety matters, that even with the introduction of the SEZ, the Applicant had failed to reach agreement with stakeholders and to demonstrate convincingly that the overall risk to safety of navigation due to the impact of the Proposed Development on safe sea room has been reduced to ALARP such that no further risk control or mitigation is practicable, cost-effective and proportionate.

### **Societal risk and EIA conclusions**

- 5.2.271. Para 6.1 of MCA/DECC 2013 guidance (which is an important document to which MGN543 requires reference) states: *'For each entry in the hazard log the risk shall be assessed against a risk Criticality Matrix*
- *'There shall be no unacceptable risks (Note: The rating of criticality may, with suitable justification, be determined by those undertaking the assessment...)*
  - *'All risks in between (e.g. criticality 3 to 5) shall be subject to an assessment of rule compliance and proposed risk controls. Further risk control options must be considered to the point where further risk control is grossly disproportionate (i.e. the SFAIRP principle) and an SFAIRP justification and declaration made.'*



- 5.2.272. Furthermore, Para 6.2 of the MCA/DECC 2013 guidance states: 'It is unlikely that reducing all risks in the hazard log to a level which is "as low as reasonably possible" (SFAIRP) will be sufficient to give confidence that societal concerns are broadly acceptable. This is because many of the risks are interrelated in both cause and consequence and also the affected stakeholders may have different perspectives of perceived risks. Therefore, as a minimum, an overall assessment of societal risk will need to be made as:
- 'An aggregate of all entries in the risk register; and for
  - 'Major risks such as collision, contact, grounding and stranding'.
- 5.2.273. The Navigational Risk Assessment (NRA) is a fundamental input to the EIA. The NRA Addendum (produced after the material change introduction of the SEZ and stakeholder workshops during the Examination period) is not reflected in the Environmental Statement and the ExA has made a number of observations in this Report upon it. The ExA also pursued in questions to the Applicant its approach to and findings on societal concerns and societal risk that are not fully covered in the NRA or ES.
- 5.2.274. As discussed at 5.2.139 above, MCA clarified (in answer to ExA's third set of Written Questions) that, properly, scored risks should be expressed more correctly as falling into the category of '*tolerable with controls/mitigation*' and that such risks are not automatically ALARP. Furthermore, the MCA concluded that on the basis of evidence presented by the end of the Examination, that additional risk above the baseline presented by the existing Thanet OWF is not acceptable to them as statutory authority with a duty to advise the decision-maker accordingly.
- 5.2.275. The Applicant concluded in the ES [[APP-051](#)] para 10.11.8 a rating of 'Unlikely' for ship collision risk as a result of construction or decommissioning of the project, when such risk is considered to be at its highest. According to the ES [[APP-051](#)] Table 10.3, the Likelihood rating of 'Unlikely' is given in EIA terms the description '*Occasionally occurs nationally and unlikely to occur during project*' whereas in the ES the rating 'Probable' has the description '*Reasonably probable that it will occur during the project*'. Therefore, the ExA needs to consider the relationship between assessed frequency of occurrence and the lifecycle duration of the project.
- 5.2.276. The ExA notes that in para 10.11.4 of the ES [[APP-051](#)] notes (in relation to assessment of marine navigation collision risk): '*Collision risk modelling was undertaken to assess the relative change in collision risk as a result of the extension. The assessment found that the historical incident rate is for one collision every 6 years within 5nm of the development. As a result of the extension this was modelled to increase by 54% to once every 4 years, without additional mitigation*'. To the ExA this statement on risk return period is confusing and contradictory when compared to the figures of 20 years and 38 years summarised by the Applicant in other submissions.

- 5.2.277. The ExA notes from the ES para 1.6.1 that the operational life of the project is expected to be 30 years; the construction phase to be about 2 years and the decommissioning period is not predicted, but it seems reasonable to assume that the project lifecycle would be at least 33 years.
- 5.2.278. On the face of it, and on a common-sense reading, the baseline risk at once every 6 years declared of the ES [APP-051] seems to the ExA clearly *'reasonably probable that it will occur during the project'* as defined in ES Table 10.3 and therefore should have been rated as a 'Probable' likelihood in EIA terms, 6 years being much less than the project lifetime.
- 5.2.279. Consequently, even taking account of the evidence that the risk level during the much longer operational phase would be less than that during construction, if the probability of collision in the vicinity of the Proposed Development is at most once every 20 years then in EIA terms, the ExA understands that on the face of it, the collision risk likelihood should in fact be 'Probable' in EIA terms, being *'reasonably probable that it will occur during the project'*.
- 5.2.280. Table 10.4 of the ES [APP-051] defines consequence of an incident as 'Medium' if it incurs *'Multiple major injuries, major damage to vessels, some pollution, some operational impact to wind farm or shipping'* and 'Low' as *'Multiple minor/moderate injuries, minor damage to vessel, minor pollution, minimal operation impact to wind farm or shipping.'*
- 5.2.281. The ExA notes that the NRA rating of consequence in Table 19 of [APP-089] to be C3 'Moderate' if the incident involves *'multiple minor or single major injury'*; *'moderate damage'* to property with costs over £100k; *'Tier 2 spill criteria capable of being limited to immediate area'*; and *'...temporary suspension of operations...'*; whereas the C4 'Major' category incurs *'multiple major injuries or single fatality'*; *'major damage'* to property with costs over £1m; Tier3 pollution; and *'temporary closure or prolonged restriction of operations...'*
- 5.2.282. As noted in para 5.2.237 above, the IPs and OPs have made a forceful case that the hazard of collision between a Class 1 or 2 vessel and another vessel would have a 'most likely' consequence rating of at least C3 'Moderate' in NRA terms incurring property damage over £100k and significant operational costs to stakeholders of delay and incident resolution.
- 5.2.283. Whilst acknowledging that the Applicant considers navigational hazard consequence to be in the 'Low' category in EIA terms, the ExA considers this C3 NRA rating maps between the 'Low' and 'Medium' categories in EIA terms because, even if incurring only multiple minor injuries, it would involve more than *'minimal operational impact to wind farm or shipping'*.
- 5.2.284. As discussed in para 5.2.278 above, the ExA considers the likelihood of collision is in fact 'Probable' in EIA terms (that is, *'reasonably probable that it will occur during the project'*) and as discussed at para 5.2.282 above, that the consequence is probably 'Low' to 'Medium' in EIA terms.

- 5.2.285. The ExA notes that if this hazard of collision between a Class 1 or 2 vessel and another vessel has a Likelihood of 'Probable' and Consequence 'Low' or 'Medium' the ES [APP-051] matrix at Table 10.5 rates the risk as 'Tolerable' in EIA terms which table 10.6 defines as '*tolerable if appropriate and proportional mitigation is put in place...*' and 'Not Significant in EIA terms'.
- 5.2.286. The safety assessment methodology to which the MCA's guidance refers and which was submitted to Examination as [REP3-013], is the International Maritime Organisation (IMO) Guidelines for Formal Safety Assessment (FSA), states: '*(T)he purpose of FSA is to reduce the risk to a level that is tolerable. IMO has a moral responsibility to limit the risks to people life and health, to the marine environment and to property*'. Section 2 explains that '*(T)he principle of ALARP is employed for the risk assessment procedure. Risks should be As Low As Reasonably Practicable. It means that accidental events whose risks fall within this region have to be reduced unless there is a disproportionate cost to the benefits obtained.*' Section 4.1 elaborates: '*The term reasonable is interpreted to mean cost-effective. Risk reduction measures should be technically practicable and the associated costs should not be disproportionate to the benefits gained. This is examined in a cost-effectiveness analysis.*'
- 5.2.287. The ExA found no substantial cost-effectiveness analysis in the application or the Applicant's subsequent submissions to Examination. Therefore, the ExA is not satisfied that risks have been controlled to ALARP and the IMO FSA obligation to '*limit risks to people life and health, to the marine environment and to property*' has probably not been fulfilled.
- 5.2.288. When questioned at ISH8 about the consequential implications of the top 4 hazards and how the NRA Addendum deals with combination risks, the Applicant's expert witness Dr Rogers answered that the NRA had already "considered the issue" [see REP5-018 Applicant's written confirmation of oral representations at ISH8 para 30]. In [REP1-024] response to ExQ1.12.9 the Applicant notes MCA/DECC 2013 Guidance section 6.2 advises that a (Formal Safety) Assessment "*should consider societal risk through two mechanisms: an aggregate of all entries in the risk register; and for Major risks such as collision, contact, grounding and stranding*".
- 5.2.289. In regard to Tolerability limits the Applicant states in [REP1-024] that the NRA '*sought to address this question through Section 8.6.3 as a means of considering overall levels of risk.*' In section 8.6.3 of the NRA [APP-089] the Applicant states '*No defined threshold exists for what constitutes an acceptable level of risk in the maritime domain or for wind farm developments...Consideration of what is deemed as an acceptable risk have been discussed by ...HSE (see HSE 1999- Reducing Risk, Protecting People)... when the risk relates to the loss of life.*'
- 5.2.290. However, the ExA notes that from the HSE 1999 document, submitted as [REP5-009], that the definition of societal concerns and societal risk is not limited to loss of life. Para 25 to 27 states '*Societal concerns or the risks*

*or threats from hazards which impact on society and which, if realized, could have adverse repercussions for the institutions responsible for putting in place the provisions and arrangements for protecting people...Societal risk is therefore a subset of societal concerns...Hazards giving rise to societal concerns share a number of common features. They often give rise to risks...where the risks and benefits tend to be unevenly distributed, for example....so that less risk may be borne now and by some future generation. People are more averse to those risks and in such cases are therefore more likely to insist on stringent Government regulation...there is also, and importantly, a concern that, in the wake of an event giving rise to such concerns, confidence in the ...institutions responsible for setting out an enforcing (these) provisions and arrangements, would be undermined.'*

- 5.2.291. In [\[REP6-026\]](#) in answer to ExA written question the Applicant notes: *'...the guidance requests consideration of societal concerns but does not direct the methodology, that should be used or how any results should be interpreted...The original NRA did not assess societal concern against other consequences e.g. property, environment or business from a navigational hazards occurring, as no such methodology is provided either by the MCA, or the HSE guidance... There is description (in paragraphs 25, 27) of how the occurrence of a hazard may have repercussions for the confidence placed in regulatory institutions, but it advises generally that this is an "intensely political" issue... The Applicant does not consider that other issues relating to confidence in regulatory institutions should have any further material effect on the conclusions it asks to be drawn from the NRA and NRA Addendum, including its scoring for identified consequence categories or its approach to aggregate risk.'*
- 5.2.292. The Applicant also states in [\[REP6-026\]](#): *'Other consequence classification of cargo or fuel loss, injury or fatality, delay or consequential reputational impact for London and Sheerness Ports were fully considered in the consequence categories of People, Property, Environment or Stakeholder / Business.'* However the ExA notes the vigorous representations by LGPL/PoTLL reviewed at para 5.2.235 above and finds that the scoring in the NRA Addendum, albeit having been tested by the Applicant following post-workshop representation by IPs and OPs (see para 5.2.86 above) was not fully scrutinised nor amended in the NRA Addendum and the ExA finds that risk scoring probably understates the consequence rating not least in terms of adverse reputational impact.
- 5.2.293. The ExA is also not satisfied that the NRA, ES or NRA Addendum have addressed societal concerns including societal risk to reputation of the marine authorities and to the port operators and owners which need to be considered as potentially adversely affected by the effects of Proposed Development.

### **Effects on pilot transfer operations**

- 5.2.294. The ExA considers that an important factor in considering the effects of Proposed Development, which was not assessed adequately in the NRA or the NRA Addendum, is the likely growth in demand for service at the

NE Spit pilot boarding station (in particular growth in numbers of large vessels dipping down to NE Spit).

- 5.2.295. The ExA judges that this potential specific growth in demand for inshore pilot transfer at NE Spit is the material issue to navigational safety and economic impact of the Proposed Development and is more significant than assessed overall baseline traffic growth for the study area. The reasoning for the importance of the potential growth of pilot transfers for large vessels is that this is where the reduction in sea room becomes most significant.
- 5.2.296. The ES Chapter 10 [[APP-051](#)] at 10.11.3 recognises Ship Collision Risk in the following terms: *'Approximately ten commercial vessels pass inshore of the Thanet Extension each day and their route would be constricted resulting in an increase in vessel traffic density. This is particularly evident in the north-west portion of the Thanet Extension where the available sea room will reduce by approximately 25%. In addition, approximately 500 pilot transfers occur at NE Spit each month, for which the navigable space will be reduced to conduct these transfers. This risk is further increased due to the presence of small craft such as fishing and recreational users, albeit they are located mostly further inshore.'* The ExA notes that the acceptability of this risk increase has been subject to the most vigorous contest by IPs and OPs.
- 5.2.297. The ExA has had regard to likely effects of the Proposed Development on pilot transfer operations that constitute an important part of the navigational activities in the sea area under consideration, primarily to the west and north-west of the Proposed Development. The ExA finds that the Proposed Development would be likely to produce an obstruction to navigation in the space between the existing TOWF and the NE Spit Racon buoy and the east-west shipping route to and from the Princes Channel; and a consequent increased risk of danger to navigation or effects to the shipping industry. The ExA finds from evidence presented by the Applicant and by IPs that such obstruction would increase the likelihood of collision by reducing the time available for encounter resolution because of traffic compression in a reduced sea area, and therefore would increase the risk attending navigation and pilot operations with consequent adverse impact to shipping in this confined sea space with complex patterns of use.
- 5.2.298. The matter in question is whether that increased risk of danger to safety of navigation and pilot transfer operations would be mitigated to As Low As Reasonably Practicable (ALARP) by the Applicant's proposed risk controls and would therefore be acceptable. MCA has concluded that this has not been demonstrated by the Applicant and therefore MCA advises the decision-maker in concluding submission at [[REP6-087](#)] that: *'...the MCA is unable to agree that the proposed project is acceptable with regards to the safety of navigation...'*; together with closing statements [[REP6-108](#)] from Trinity House: *'we cannot categorically state that "all" risks to shipping and navigation have been reduced to ALARP as this concept also has a commercial element involved for the applicant'* and [[REP6-097](#)] from PLA: *'if the Order is made in the form currently*

*proposed, the PLA and ESL will remain concerned about the safety of navigation and the continued viability of their operations to the west of the existing wind farm.*' The ExA agrees with the conclusion of MCA that the Applicant has not demonstrated satisfactorily that increased risk to safety of navigation and pilot transfer operations in the sea space to the west and north-west of the Proposed Development would be mitigated or controlled to ALARP.

### **Effects on shipping routes**

- 5.2.299. The ExA finds that the Applicant has made a convincing case (in 5.2.39 above and its subsequent paragraphs) that the sea area in the 5nm immediately around the Thanet OWF (TOWF) used as shipping routes does not contain 'recognised sea lanes' in relation to IMO definitions and the routes do not give unique access to a lifeline port therefore cannot be regarded as 'essential'.
- 5.2.300. The ExA notes that to comply with EN-3 para 2.6.168 and .169 the decision-maker 'should have regard to...the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the development'... and '*[t]he 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.*'
- 5.2.301. The ExA gives substantial weight to the advice from MCA in [[REP3-082](#)] that: '*(T)he area of concern...to the west of the existing Thanet Windfarm...is not a formally "designated" sea lane as such. However, ...(I)t is...considered an essential area for navigation and of strategic importance for vessel operation and accessing ports...*'
- 5.2.302. The ExA therefore finds that, whilst there is no 'recognised sea lane' in the immediate 5nm vicinity of the Proposed Development, the routes passing the TOWF through the sea area immediately surrounding it are strategically important to international shipping due to time saving when approaching the Thames from the south and in adverse Metocean conditions.
- 5.2.303. The ExA finds that the IPs have presented convincing evidence (notably that discussed at 5.2.35, 5.2.181 and 5.2.187 above) that the extension of the TOWF to the west and north-west, even with the SEZ as proposed, would probably increase perception of navigational risk (or 'danger') by prudent mariners and would consequently cause some ships masters to decide to not take the short 'inshore route' to the Thames to the west of the Thanet OWF (at least in certain Metocean conditions) but instead to divert around the east and north of the OWF to dip down to transfer a pilot at the normal location at NE Spit.
- 5.2.304. The ExA notes that the Applicant has disputed that 14.4nm is the extra distance that would be incurred by diversion around the Proposed Development. During Examination it emerged that even without dip-down to transfer a pilot, the diversion around the east of the TEOW

would be at least 11nm which would incur about one hour extra steaming time at normal vessel speeds, a demonstrated in evidence discussed by PoTLL/LGPL at [REP5-071] page 10, with commercial impacts of such a diversion discussed at page 5 of the same representation. At [REP6-020] para 55 the Applicant stated that '*if any vessel chose to deviate around the wind farm and not use the inshore route as a result of TEOW (which the Applicant does not consider necessary) it is the Applicant's position that this would lead to an 11nm diversion.*' At [REP8-003] para 62 the Applicant's final position was that '*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.*'

- 5.2.305. Having considered this point, the ExA notes that judgments about whether or not to divert from the inshore route would be judgments taken individually by vessel Masters, dependent on a range of factors including vessel size, the positions of other vessel traffic and metocean conditions. However, the ExA concludes on the balance of the evidence that it is likely that enough Masters would divert in enough circumstances so as to materially increase average voyage times and materially reduce the efficient accessibility of Thames ports, both of which have adverse economic consequences. The ExA observes that, whether a dip-down manoeuvre to pick up or set down a pilot is part of a voyage or not, a diverted vessel would accumulate approximately an additional hour of steaming time per voyage over and above the duration of an undiverted course along the inshore route.

### **Effects on ports and port operations**

- 5.2.306. The ExA agrees with IP and OP representations that if safety and resilience of pilot operations at NE Spit are compromised by the navigational risk effects of Proposed Development this may have consequential effects of:
- perceived risk causing prudent mariners to divert around the wind farm and seek pilot transfer further away from the Pilot Boarding Diamond when Metocean conditions permit;
  - inability to transfer pilots in extreme Metocean conditions when NE Spit is the only pilot station in the Thames approaches that can remain operational, sheltered by the North Foreland;
  - economic loss to pilots and pilot launch service operators;
  - some reduction in the number of days on which pilotage into the Thames is available to some larger vessels, owing to the unwillingness due to perceived additional risk of ships' masters to transfer pilot at the sheltered NE Spit PBD, which tends to remain 'on-station' when other PBDs are 'off-station' in adverse Metocean conditions;
  - some reduction in and delay to flexible access to ports served from the Thames estuary in adverse Metocean conditions;
  - reputation damage to the Port of London and Port of Sheerness; and
  - consequent potential for economic loss.
- 5.2.307. The ExA finds from the evidence presented that such a diversion of passage for inbound traffic, noted at 5.2.303 above, would add about

one hour's steaming time and that a decision to divert may have to be made relatively late on approach to the North Foreland depending on evolving Metocean conditions. In adverse conditions when no other pilot boarding can be carried out elsewhere in the approaches to the Thames and Medway, this could have the effect of needing to delay planned arrival in port or to seek alternative port berthing arrangements, either of which would have economic consequences, particularly in the case of just-in-time logistics chains or perishable goods delivery. It should be noted that such delays can combine with the effect of tides in tidally limited channels to increase the time that some larger vessels require to access and depart from berths, tending to make port operations less efficient.

- 5.2.308. As reviewed in 5.2.47 and its subsequent paragraphs, PoTLL/LGPL represented vigorously throughout the Examination that the Proposed Development has failed properly to take into account NPS EN-3 para 2.6.162 "*minimising disruption or economic loss to the shipping and navigation industries*" or MPS policy PS3 '*...that they will not interfere with current activity and future opportunity for expansion of ports and harbours...*'. LGPL/PoTLL also makes the case that effects of the Proposed Development would probably include '*(R)educed resilience to adverse weather conditions and sea states as a result of the inability to utilise safely the NE Spit pilot boarding station by certain types of vessels*'. The ExA finds that the LGPL/PoTLL evidence is compelling and that the Applicant has not made a satisfactory rebuttal.
- 5.2.309. In their closing submission [[REP7-042](#)], LGPL/PoTLL states: '*...the Ports are primarily concerned with the considerable economic and commercial impacts which they consider could be caused if the offshore wind farm extension is consented. It is regrettable that with the end of the examination now upon us, there remain a number of areas of fundamental disagreement between the Applicant and the Ports.*'
- 5.2.310. The Applicant made a submission as [[REP6-020](#)] of an assessment of shipping commercial impact, reviewed at 5.2.66 above with subsequent paragraphs; this submission was made two weeks before the close of the Examination and therefore many weeks after the conclusion of the NRA Addendum.
- 5.2.311. However PoTLL/LGPL have argued convincingly that this risk has very great consequences for their competitive position and economic sustainability of London ports, particularly those whose competitive advantage is geographic and related to onward supply chains. LGPL/PoTLL conclude in [[REP7-042](#)]: '*The Ports consider that the Applicant's last minute attempt to provide economic assessment of the impacts of the proposed offshore wind farm extension is deficient, rushed and lacking in a number of areas. On that basis it is hard to conclude that the assessment has been carried out in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).*' '



5.2.312. The Applicant’s submission [[REP6-020](#)] argues, among other matters, the counter-case that such instances of diversion around the OWF would be rare therefore the likelihood of the effect materialising would be very low and the financial consequences would be low.

5.2.313. In their closing submission [[REP7-042](#)], and looking at the risks in NRA terms, LGPL/PoTLL claimed: ‘As is demonstrated by the Applicant’s shipping commercial assessment (Annex C to Appendix 16) [[REP6-020](#)], the risks to stakeholders are at least consequence category 3 (when diverted transits and additional occasions when a vessel cannot take a pilot are considered) occurring on a yearly basis and thus result in a risk score above ALARP.’ Even if the assessment has been carried out in accordance with the EIA Regulations, the ExA considers that this LGPL/PoTLL argument is valid.

**Figure 5.2.11: Tables 10.5 and 10.6 from the ES Showing Significance Scoring and Definition<sup>66</sup>**

**Table 10.5: Significance of potential effects**

		Consequence			
		High	Medium	Low	Negligible
Likelihood	Likely	Unacceptable	Unacceptable	Tolerable	Minor
	Probable	Unacceptable	Tolerable	Tolerable	Minor
	Unlikely	Tolerable	Tolerable	Minor	Negligible
	Extremely Unlikely	Minor	Minor	Negligible	Negligible

**Table 10.6: Definition of Significance**

Significance	Description/ reason	EIA Significance
Negligible	Risk is acceptable without additional mitigation.	Not Significant
Minor	Risks are acceptable, mitigation may be recommended but not required.	Not Significant
Tolerable	Risk is ALARP; tolerable if appropriate and proportional mitigation is put in place to manage and monitor the risks.	Not Significant
Unacceptable	Risks are intolerable. Significant in EIA terms.	Significant

5.2.314. Consequently the ExA looks to the ES [[APP-051](#)] matrices at Tables 10.5 and 10.6 (see Figure 5.2.11 above) to assess the significance in EIA terms of adverse economic effects of the Proposed Development. The

<sup>66</sup> From ES Shipping and Navigation [[APP-051](#)].

ExA concludes that based on a combination of '**Likely**' likelihood: '*Likely to happen more than once in the lifetime of the project*' and at least '**Medium**' consequence: '*...some operational impact to ... shipping*' the EIA rating should in fact be rated '**Unacceptable**' in regard to socio-economic risk to shipping and the London ports and possibly also in terms of societal risk and reputational harm to the MCA, TH and to the harbour authorities of London and Sheerness, and therefore should be rated 'Significant in EIA terms'.

### **Policy considerations**

- 5.2.315. This subsection provides ExA commentary on evidence submitted in the application or Examination that bears on policy matters that the SoS must consider in relation to PA2008 s104, namely:
- any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement");
  - the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;
  - any local impact Report (within the meaning given by PA2008 s60(3)) submitted to the SoS before the specified deadline for submission;
  - any matters prescribed in relation to development of the description to which the application relates; and
  - any other matters which the SoS thinks are both important and relevant to the decision.
- 5.2.316. The ExA agrees with representations made by IPs that while NPS EN-3 taken together with EN-1, provide the primary basis for decisions by the Secretary of State, relevant content of the NPS Ports should be an important and relevant consideration under PA2008 s104(2)(d). The policy intent of maintaining competitiveness and resilience to adverse weather and accidents, discussed at para 5.2.50 above, seems to the ExA to be both important and relevant to this DCO application.
- 5.2.317. The ExA also notes NPS EN-3, paragraph 2.6.153 (discussed in more detail at 5.2.25 above) which states that: '*Applicants should establish stakeholder engagement with interested parties in the navigation sector early in the development phase of the proposed offshore wind farm... [to] allow offshore wind farms and navigation uses of the sea to successfully co-exist.*' The ExA agrees with the representation by PoTLL/LGPL (introduced at 5.2.29 above) that contends that the NRA and hence the EIA is compromised by the complete lack of consultation with commercial port interests during the pre-application stage and notes that consultation with PLA and Port of Sheerness appears to have been essentially initiated with those entities in their role as port- and harbour control authority and not as commercial operators.
- 5.2.318. Both the Applicant and LGPL/PoTLL subsequently engaged fully throughout the Examination but it is notable that their final SoCG [[REP6-106](#)] reveals a similar amount of distance between their positions as

existed at the beginning of the Examination, essentially disagreement on:

- the assessment of vessel growth and traffic mix,
- risk consequence scoring,
- conclusions of the NRA Addendum,
- adequacy of impacts on commercial shipping and
- the use of SEZ for mitigation.

- 5.2.319. As concluded at para 5.2.299, the ExA finds that the Applicant has made a convincing case that shipping routes immediately around the Thanet OWF (TOWF) are not 'recognised sea lanes' in relation to IMO definitions; therefore there is no requirement for automatic refusal of consent as required by paragraph 2.6.161 of EN-3 and mirroring phrasing in the Energy Act 2004 Section 36B which sets out duties imposed on the MMO in relation to navigation who '*may not grant such a consent if it considers that interference with the use of recognised sea lanes essential to international navigation is likely to be caused*'. By the same reasoning, the ExA finds that there are no international policy obligations relevant to s104 PA2008 binding the decision-maker in regard to this definition of the sea space in the immediate 5nm zone around the TOWF.
- 5.2.320. The ExA notes that to comply with EN-3 para 2.6.168 the decision-maker should have regard: '*...to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the development*'. The ExA has therefore to consider if any 'obstruction of or danger to navigation' (EN-3 para 2.6.168) effects of Proposed Development exist and may have consequential effects on shipping industries and shipping activity. This is reviewed at para 5.2.303 above. The ExA finds that there is a need for the SoS to have regard to the obstruction of navigation in the sea area containing relatively high traffic density and complex navigation patterns between the Proposed Development and the NE Spit navigational mark; and to a lesser extent between the Proposed Development and the Elbow navigational mark. In both cases additional danger to navigation would result.
- 5.2.321. The ExA notes that to comply with EN-3 para 2.6.169 the decision-maker should have regard: '*...to the likely overall effect of the development in question and to any cumulative effects of other relevant proposed, consented and operational offshore wind farms.*'
- 5.2.322. The ExA also notes that NPS EN-3, paragraph 2.6.147 states: '*to ensure safety of shipping, it is Government policy that wind farms should not be consented where they would pose unacceptable risks to navigational safety after mitigation measures have been adopted*'. This is reviewed in para 5.2.297 above and para 5.2.222 above. The ExA notes that at Deadline 6 the MCA confirmed in [\[REP6-087\]](#) that: '*the MCA is unable to agree that the proposed project is acceptable with regards to the safety of navigation...'*'.
- 5.2.323. Summarised, the UK Marine Policy Statement (MPS), discussed at 5.2.54 above. , sets out at paragraph 3.4.7 in respect of Ports and Shipping

that: '*... Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety ... decisions should also take account of environmental, social and economic effects ... authorities will also need to take account of the need to protect the efficiency and resilience of continuing port operations, as well as further port development.*' This is reviewed at para 5.2.306 above. The ExA finds that despite the introduction of the SEZ the Applicant has not minimised negative impacts on shipping activity, freedom of navigation and navigational safety; as a consequent effect there is some probability of negative effects to the efficiency and resilience of continuing port operations as well as further port development that the SoS as decision-maker needs to take into account in regard to the MPS para 3.4.7.

5.2.324. NPS EN-3 paragraph 2.6.162 sets out that: 'The IPC should be satisfied that the site selection has been made with a view to avoiding or minimising disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, lifeline ferries and recreational users of the sea. Where a proposed development is likely to affect major commercial navigation routes, for instance by causing appreciably longer transit times, the IPC should give these adverse effects substantial weight in its decision making...'. This is reviewed at para 5.2.308 above. The ExA finds that there is likely to be some diversion of shipping around the Proposed Development resulting in about one hour's additional steaming time, which is an appreciably longer transit time only if there is a late decision to make the diversion based on dynamic risk assessment by the ship's master or navigator.

## **Conclusion on Marine Navigation, Shipping & Ports**

5.2.325. This section sets out the ExA's overall conclusions in relation to marine navigation, shipping and ports. Following the logical process set out at para 5.2.25 above the ExA has made the following findings in regard to the evidence presented to Examination.

- The effect of spatial constraints on shipping traffic flows are most relevant in the sea space between the Proposed Development and the end of the NE Spit (marked by a Racon buoy), where the largest vessels dip down southwards to transfer pilots and cross other marine traffic.
- Even with the proposed Structures Exclusion Zone (SEZ) in place, the Proposed Development would impinge on sea room at this location to such an extent that it would be likely to compromise safe navigation and pilot transfer operations, of particular concern when this sea space is the only safe location to transfer Thames pilots, in extreme Metocean conditions.
- The conclusions of the Navigational Risk Assessment (NRA) and its Addendum have not convinced the relevant regulatory bodies (MCA and TH), industry stakeholders or the ExA that increased risk effects of the Proposed Development on navigation are reduced to As Low As

Reasonably Practicable (ALARP) and therefore tolerable with risk controls/mitigation.

- Consequential effects on pilot operations and on ports and port operations are such that economic harm is likely, and mitigation has not been proposed for this harm.
- The probable effects of the Proposed Development on marine navigation, shipping and ports fail to meet relevant policy tests as discussed in greater detail below.
- Taking all relevant evidence and policies into account, the ExA finds generally that the Applicant has not met the policy test NPS EN-3, paragraph 2.6.153 of establishing early and continuing stakeholder engagement that ensures '*...that solutions are sought that allow offshore wind farms and navigation uses of the sea to successfully co-exist*'.
- The ExA finds specifically that opposition to the detail of the Proposed Development from multiple marine stakeholders (including statutory authorities) is founded on public interest navigational safety concerns, not on opposition to OWF development in principle. It has been continuously expressed from pre-application consultations through the Examination and the Applicant has been provided repeated opportunities to modify its proposals to resolve the concerns raised, but has not achieved this end.
- The IP and OP concerns over navigational safety are based on the effects of the Proposed Development on reduction of sea room and consequential effects of increased marine navigational risk on safety, efficiency and resilience of shipping, port and pilot operations.
- IPs and OPs presented a level of expertise and specific local knowledge and local operational experience that was not matched by that of the experts representing the Applicant.
- Submitted evidence reveals a lack of effective understanding between the Applicant's expert consultants and the regulators and other stakeholders, as demonstrated through disputed minutes and written as well as oral representations.
- The Applicant did not commission any independent review of the NRA or the NRA Addendum, with the exception of the Anatec Collision Assessment post-SEZ submitted at [[REP6-064](#)].
- The IPs and OPs vigorously contested to the end of the Examination the figure for traffic growth projection assumed by the Applicant as being substantially too low (particularly in relation to the frequency of larger vessels expected to use the relevant sea area) and this figure drives the assessed likelihood of hazard occurrence on which the NRA and NRA Addendum are founded and is therefore crucial to the Applicant's case.
- Up to the end of the Examination, IPs and OPs maintained the position that the 'Most Likely' consequence of incident occurrence between vessels should be assessed on the aggregate of damage incurred by both vessels involved and therefore the top hazard should fall into at least one risk category higher than that assessed by the Applicant's navigation risk consultant.
- Despite the introduction of the SEZ as a material change by the Applicant and subsequently holding a workshop with stakeholders (observed by MCA as statutory authority) to review in detail the

scoring of 4 top hazards, the stakeholders remained unable to agree with the Applicant that the navigation risk of the Proposed Development is acceptable or tolerable.

- Substantial disagreement between IPs and OPs and the Applicant over multiple effects to Shipping and Marine Navigation remained at the end of the Examination.
- The Applicant has stood by its assessment that all navigational risk falls within the range of 'tolerable if mitigated to As Low As Reasonably Practicable'.
- However, the MCA, as statutory authority with responsibility to advise the decision-maker on navigational risk effects of Proposed Development, has concluded at the end of the Examination that the NRA and its Addendum have not demonstrated that increased risk to navigational safety presented by the Proposed Development can be mitigated or controlled to ALARP and therefore advises that the DCO application should not be accepted.

5.2.326. Taking all relevant evidence and policies into account, the ExA has made the following specific findings that are of foundational importance to its overall recommendations on the application before the SoS.

**Effects on sea room for safe navigation:**

- Assessment of safe sea space should take account of context of turning manoeuvres, visibility and geographic constraints, not rely on rule-based computation alone.
- Whether or not there will be growth in large vessel traffic and the need to reduce pressure on congested pilot transfer sea space at Sunk PBD, large commercial ships of 333m LOA and deep draught already use the NE Spit to transfer pilots in order to reduce passage time and would probably have their safety of navigation compromised by the effects of the Proposed Development.
- Despite the introduction of the SEZ, the Proposed Development encroaches on the critical sea space to the north-west of the TOWF which contains complex shipping movements and which is constrained by the NE Spit bank and its navigational mark to such an extent that it may constitute a danger to navigational safety of large vessels constrained by draught at least in adverse Metocean conditions and therefore contrary to NPS EN-3 para 2.6.168; and in regard to this assessment the opinion of the Applicant's expert witnesses and advisers is less reliable than that of the IPs including highly experienced local pilots and pilot launch coxswains.
- The evidence of locally experienced mariner stakeholders is more reliable than that of the Applicant's experts to conclude that safety for general navigation as well as manoeuvring to transfer pilots would be reduced critically in the sea area of complex pilotage and general navigation between the proposed SEZ limits and the fixed navigational marks of NE Spit Racon buoy and also to a lesser extent at the Elbow buoy off the North Foreland.

**Traffic growth projection and likelihood of incident occurrence:**

- The overall trend figures taken by the Applicant of 10% traffic growth in the region over the project lifetime probably understates the

relevant traffic growth in specific types of traffic to London ports using the routes close to the TOWF and consequently understates the likelihood of hazardous incident occurrence in the vicinity of the Proposed Development.

**Navigational risk assessment:**

- Contrary to NPS EN-3 para 2.6.153, the NRA was not founded on sufficient stakeholder engagement to properly assess hazards and sea room requirements to an extent that fundamentally undermines the conclusion of the ES that negative impacts resulting from effects of Proposed Development can be regarded as tolerable with mitigation.
- Additionally, the SEZ proposed during the Examination period and the hazard identification and re-scoring process carried out thereafter were not founded on sufficient stakeholder agreement to comply with NPS EN-3 para 2.6.153 and thus the resulting quantitative risk assessment addendum should be regarded as unreliable and therefore not compliant with NPS EN-3 para 2.6.157.
- The Applicant identified in the NRA additional risk controls that might be considered to further mitigate risk to lower down the ALARP scale. The Applicant concluded that such additional controls were not justified but no substantial cost-effectiveness analysis has been presented to substantiate the Applicant's claim of all major navigational risks being controlled to ALARP.
- In the role of independent observer and statutory authority with the responsibility under MGN543 to advise the decision-maker, the MCA noted at the conclusion of the Examination that even with the introduction of a Structures Exclusion Zone and additional risk assessment late in the Examination, the Applicant has failed to reach agreement with stakeholders on navigational risk assessment inputs or outputs.
- Substantial weight needs to be attributed to the qualitative judgement of the MCA, as statutory authority responsible for marine safety matters: that the Applicant has failed to demonstrate convincingly that the overall risk to safety of navigation due to the effects of the Proposed Development has been reduced to ALARP such that no further risk control or mitigation is practicable, cost-effective and proportionate.

**Societal risk and EIA:**

- The Applicant's risk assessment concludes that collision involving a Class 1 or 2 large commercial vessel in the vicinity of the Proposed Development would probably occur at least once every 20 years; the ExA notes that therefore this is at least once in the lifetime of the Proposed Development.
- In EIA terms, the likelihood of collision in the immediate vicinity of the Proposed Development between a Class 1 or 2 commercial vessel and another vessel should be rated at least '*Probable*' (that is, '*Reasonably probable that it will occur during the project*') and consequence rating of such collision should be rated '*Low*' to '*Medium*' because, even if incurring only multiple minor injuries, it would involve more than '*minimal operational impact to wind farm or shipping*'; in EIA terms

the primary marine navigational risk is therefore *'Tolerable' 'if appropriate and proportional mitigation is put in place...'*.

- No substantial cost-effectiveness analysis of risk controls was submitted in the application or to Examination. Therefore, the ExA is not satisfied that risks have been controlled to ALARP and the IMO FSA obligation to *'limit risks to people life and health, to the marine environment and to property'* (discussed at para 5.2.286 above) have probably not been fulfilled.
- This means that societal concerns, including societal risk to reputation of the marine authorities and of the port operators and owners, should be considered on the balance of probability potentially to be adversely influenced by the Proposed Development.
- The methodology for rating likelihood and consequence of hazard occurrence applied in the NRA and NRA Addendum differs from that applied in the EIA to assess significance (discussed at para 5.2.314 above above). The consequence of this is that the likelihood and consequence of adverse economic effects to ports and shipping should be rated Significant in EIA terms and therefore negative in the planning balance.

#### **Effects on pilot transfer operations:**

- Due to increased pressure on the Sunk deep-water channel and pilot station, there is likely to be increased demand from larger vessels for pilot transfer at NE Spit, whether or not existing channels in the Thames estuary are capital dredged.
- The Proposed Development would increase compression of traffic and consequently the level of hazard and perceived navigational risk for pilot transfer operations.
- The ExA discounts the findings of the Pilot Transfer Bridge Simulation (PTBS) for anything other than testing feasibility of pilot operations in 'normal', non-adverse operating conditions.

#### **Effects on shipping routes:**

- The perceived risk to navigational safety as an effect of the Proposed Development would be of a sufficient extent that there is a significant probability that masters of large vessels would not be confident of having sufficient sea room with safety margin to cope with emergency loss of power or situations involving conflicts of converging vessels, particularly in adverse Metocean conditions, and would therefore opt to deviate around the TEOW, incurring additional passage time and cost.
- The sea area in the 5nm immediately around the Thanet OWF (TOWF), whilst containing shipping routes, does not contain 'recognised sea lanes' in the intended sense of IMO definitions and NPS, nor do the routes give unique access to a lifeline port therefore the routes cannot be regarded as 'essential', therefore there are no relevant national or international policy obligations binding the decision-maker in this regard.
- The routes along the western and the northern perimeter of the TOWF are of strategic importance for shipping access to the Thames and Medway ports, due to time saving when approaching the Thames from the south and in adverse Metocean conditions. Therefore, whilst the



Proposed Development does not contain internationally recognised sea lanes, it does adversely affect 'major commercial navigation routes' including pilot transfer locations immediately to the west and the north of the OWF and therefore as required by NPS EN-3 para 2.6.162 the decision-maker must give substantial weight to these adverse effects.

- The extension of the TOWF to the west and north-west, even with SEZ as proposed, would probably increase perception of navigational risk for pilot transfer and passage for vessels over 240m. LOA and would consequently cause some ship masters to decide (at least in adverse Metocean conditions) to divert around the east and north of the TOWF, either picking up a pilot at Goodwin or Tongue PBDs or by dipping down to NE Spit; thereby having an adverse effect on the resilience of pilot operations and access to ports.

**Effects on ports and port operations:**

- On the balance of probability, the effect of Proposed Development (even with SEZ) of additional risk to or displacement of pilot transfer operations would have an adverse effect on resilience to adverse weather and accidents and thereby may have consequential adverse effects on passage times, berthing operations, reputation and competitiveness of some London ports.
- The Applicant's assessment of economic effects of Proposed Development was as claimed by an IP and OP '*deficient, rushed and lacking in a number of areas*'.
- The probability of adverse effects to Shipping and Port Operations and reputation is '*Likely to happen more than once in the lifetime of the project*' with a consequence of at least: '*...some operational impact to ... shipping*' therefore this effect is rated in accordance with the ES to be 'Unacceptable' and 'Significant in EIA terms'.
- Having regard to NPS EN-3 para 2.6.162, the perception of increased risk to safe navigation and pilot transfer operations in the general area of NE Spit would cause prudent mariners in certain Metocean and tidal conditions to deviate from their normal routing; in extreme conditions in which pilot service for the Ports of London and Sheerness can only be delivered at NE Spit this perceived risk could result in economic and reputational harm to ports and pilot services through loss of resilience and delay or diversion of shipping to other ports and is therefore contrary to NPS Ports para 3.4.13, being an important and relevant consideration in this DCO application, and also contrary to Marine Policy Statement para 3.4.7 which the SoS is obliged to take into account.

**Policy considerations:**

- NPS EN-3, paragraph 2.6.147: '*...wind farms should not be consented where they would pose unacceptable risks to navigational safety after mitigation measures have been adopted*'; at Deadline 6 the MCA confirmed that: '*the MCA is unable to agree that the proposed project is acceptable with regards to the safety of navigation...*'
- The NRA as a fundamental input to the EIA is compromised by the lack of consultation with commercial port interests during the pre-application stage and a general lack of genuine engagement with the

concerns consistently expressed by the regulatory stakeholders contrary to NPS EN-3, paragraph 2.6.153 which states that: *'Applicants should establish stakeholder engagement with interested parties in the navigation sector early in the development phase of the proposed offshore wind farm... [to] allow offshore wind farms and navigation uses of the sea to successfully co-exist.'*

- Also contrary to NPS EN-3 para 2.6.157 which requires an NRA to be carried out in accordance with the relevant marine guidance, the ExA agrees with the MCA that the NRA and the NRA Addendum fail to provide adequate cost-effectiveness analysis of potential risk controls as recommended in IMO FSA guidance and discussed at paras 5.2.286 and 5.2.287 above.
- The ExA has regard to NPS EN-3 paragraph 2.6.162 and gives some weight to the likelihood of some diversion of shipping around the Proposed Development resulting in about an hour's additional steaming time, which is an appreciably longer transit time only if there is a late decision to make the diversion based on dynamic risk assessment.
- As required by NPS EN-3 para 2.6.168 there is a need for the SoS to have regard to the obstruction of navigation in the sea area containing relatively high traffic density and complex navigation patterns that would be created between the Proposed Development and the NE Spit navigational mark despite the SEZ; and to a lesser extent between the Proposed Development and the Elbow navigational mark; in both cases additional danger to navigation would result.
- NPS Ports para 3.4.13 seems to the ExA to be both important and relevant to this DCO application; it cites the need for resilience of ports to account for *'short term demand peaks, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties without causing economic disruption through impediment to the flow of imports and exports'*.
- Despite the introduction of the SEZ the Applicant has not minimised negative impacts on shipping activity, freedom of navigation and navigational safety; as a consequent effect there is a probability of negative effects to the efficiency and resilience of continuing port operations as well as further port development that the SoS as decision-maker needs to take into account in regard to the MPS para 3.4.7.

**Planning balance summary:**

- Taken together, a combination of adverse effects insufficiently mitigated and policy non-compliance make marine navigation, shipping and ports considerations a major net negative in the planning balance.

## **5.3. BIODIVERSITY, ECOLOGY & THE NATURAL ENVIRONMENT**

### **Introduction**

5.3.1. This section deals with the biodiversity, ecology and natural environment matters considered during the Examination but not engaging the Habitats and Birds Directives or HRA; specifically, the effect of the Proposed Development on (in sub-sections below):

- designated sites;
- Marine Conservation Zones (MCZs);
- intertidal habitats and ecology;
- fish and shellfish ecology;
- protected species; and
- other ecological matters.

5.3.2. The potential impacts of the offshore wind farm on offshore ornithology and marine mammals were core themes in the Examination and to a great extent these were matters that related to the Habitats Regulations Assessment. Accordingly, the potential effects of the Proposed Development on European Sites within the UK are considered in Chapter 7 and on Natura 2000 sites outside the UK are considered in Chapter 8 of this Report and not repeated here.

### **Designated Sites**

#### **Introduction**

5.3.3. This section deals with the effect of the Proposed Development on designated sites, specifically:

- internationally designated sites;
- nationally designated sites;
- regionally and locally designated sites;
- ancient woodlands and protected trees; and
- habitats of nature conservation importance.

5.3.4. The effect on Marine Conservation Zones as nationally designated sites was a matter of considerable debate during the Examination and is therefore considered in a separate section of this chapter from paragraph 5.3.55 onwards.

#### **Policy Considerations**

5.3.5. Section 5.3 of NPS EN-1 states that: '[i]n taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider

environment'.<sup>67</sup> It also sets out an expectation<sup>68</sup> that applicants should show how projects have taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

- 5.3.6. Internationally designated sites are afforded statutory protection under the Habitats Regulations<sup>69</sup> and the Offshore Marine Conservation Regulations<sup>70</sup>, which implement the EU Habitats Directive<sup>71</sup> and relevant parts of the Wild Birds Directive<sup>72</sup>. The UK also has to meet its obligations under the Ramsar Convention<sup>73</sup>, which focuses on wetlands of international importance. NPS EN-1 states<sup>74</sup> that as a matter of policy, the Government wishes potential SPAs (pSPAs) to be considered as if they had already been classified and Ramsar sites to receive the same protection.
- 5.3.7. MCZs are nationally designated areas under the MACAA2009 and are dealt with within a separate section of this chapter. SSSIs are nationally designated sites which NPS EN-1 emphasises should be given a high degree of protection<sup>75</sup>. All National Nature Reserves are notified as SSSIs. EN-1 states<sup>76</sup> that where a Proposed Development is likely to have an adverse effect on an SSSI (either individually or in-combination with other developments), development consent should not normally be granted.
- 5.3.8. Sites designated for their regional and local biodiversity and geological interest should also, in accordance with NPS EN-1<sup>77</sup>, be given due consideration in development consent decisions. With regard to ancient woodland, NPS EN-1 is clear<sup>78</sup> that, *'The IPC should not grant development consent for any development that would result in its loss or deterioration unless the benefits (including need) of the development, in that location outweigh the loss of the woodland habitat'*. It continues: *'Aged or 'veteran' trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided'*.
- 5.3.9. Section 4.4 of NPS EN-1 sets out the policy approach to dealing with alternatives. It states<sup>79</sup> that, 'applicants are obliged to include in their

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<sup>67</sup> Paragraph 5.3.8 of NPS EN-1.

<sup>68</sup> Paragraph 5.3.4 of NPS EN-1.

<sup>69</sup> The Conservation of Habitats and Species Regulations 2017.

<sup>70</sup> The Conservation of Offshore Marine Habitats and Species Regulations 2017.

<sup>71</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified).

<sup>72</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (as codified).

<sup>73</sup> The Convention on Wetlands of International Importance especially as Waterfowl Habitat, as amended in 1982 and 1987.

<sup>74</sup> Paragraph 5.3.9 of NPS EN-1.

<sup>75</sup> Paragraph 5.3.10 of NPS EN-1.

<sup>76</sup> Paragraph 5.3.11 of NPS EN-1.

<sup>77</sup> Paragraph 5.3.13 of NPS EN-1.

<sup>78</sup> Paragraph 5.3.14 of NPS EN-1.

<sup>79</sup> Paragraph 4.4.2 of NPS EN-1.

ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility'. It notes that in some circumstances there are specific legislative or policy requirements to consider alternatives, such as under the Habitats Directive.

- 5.3.10. Paragraph 5.3.7 of NPS EN-1 requires that where significant harm to biodiversity cannot be avoided, there should be consideration of reasonable alternatives. NPS EN-3 additionally states<sup>80</sup>: '*An assessment of the effects of installing cable across the intertidal zone should include information, where relevant, about any alternative landfall sites that have been considered by the applicant during the design phase and an explanation for the final choice...*'.
- 5.3.11. The MPS states<sup>81</sup> that, 'As a general principle, development should aim to avoid harm to marine ecology, biodiversity and geological conservation interests (including geological and morphological features), including through location, mitigation and consideration of reasonable alternatives.'
- 5.3.12. For the purposes of section 5.3 of NPS EN-1, '*habitats and other species of principal importance for the conservation of biodiversity*' relate to the list of habitats and species of nature conservation importance that is required to be identified under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. This includes particular terrestrial, freshwater and marine habitats.
- 5.3.13. TDC's LIR [[REP1-128](#)] indicates that Policy NC6 'RIG Sites' of the adopted Thanet Local Plan (2006) is an important and relevant consideration. The policy states that at Regionally Important Geomorphological / Geological (RIG) sites, development which would result in the loss or obstruction of geological features of importance for study and research purposes will not be permitted. Whilst the policy is noted, the LIR does not identify any RIG sites that it considers to be potentially affected by the Proposed Development.
- 5.3.14. The TDC LIR also indicates that emerging Policy CC07 of the draft Thanet Local Plan 2019 supports proposals for development of renewable energy facilities at Richborough if it can be demonstrated that there would not be detriment to nearby sites of nature conservation value or that any effects can be mitigated. In addition, it highlights emerging policies SP24, SP23, GI01, GI02 and GI03 which together cover matters of biodiversity and conservation. By the close of this Examination, the draft Local Plan had reached its Examination stage.
- 5.3.15. The KCC and DDC LIRs do not identify any directly applicable policies.

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<sup>80</sup> Paragraph 2.6.81 of NPS EN-3.

<sup>81</sup> Paragraph 2.6.1.3 of the MPS.

## The Applicant's Case

- 5.3.16. The Applicant's assessment of potential effects on designated sites is principally set out in the ES [[APP-049](#)] (offshore designated sites) and [[APP-061](#)] (onshore biodiversity).
- 5.3.17. The Applicant identifies the following statutorily designated sites as being potentially affected by the Proposed Development.
- Internationally designated sites:
    - Thanet Coast SAC;
    - Sandwich Bay SAC;
    - Southern North Sea (SNS) cSAC<sup>82</sup>;
    - Margate and Long Sands Site of Community Importance (SCI);
    - Thanet Coast and Sandwich Bay SPA;
    - Outer Thames Estuary SPA;
    - Stodmarsh SPA;
    - Stodmarsh Ramsar; and
    - Thanet Coast and Sandwich Bay Ramsar;
  - Nationally designated sites:
    - Thanet Coast MCZ;
    - Goodwin Sands rMCZ<sup>83</sup>;
    - Sandwich Bay to Hacklinge Marshes SSSI;
    - Thanet Coast SSSI; and
    - Sandwich and Pegwell Bay NNR;
  - Regional / local designations:
    - Prince's Beachlands Local Nature Reserve (LNR)
  - Habitat of nature conservation importance:
    - Potential presence of *Sabellaria Spinulosa* reef.
- 5.3.18. Additionally, a number of non-statutory sites were identified at paragraphs 5.10.63-5.10.68 of [[APP-061](#)] including Ash Level and South Richborough Pasture Local Wildlife Site, Roadside Nature Reserve A256 (Sandwich Road), and the Sandwich and Pegwell Bay KWT Reserve.
- 5.3.19. Table 8.9 of [[APP-049](#)] and Table 5.16 of [[APP-061](#)] present a summary of the predicted impacts of the Proposed Development on designated sites. All of the residual impacts were identified as 'negligible adverse', 'minor adverse' or 'not significant' for which no possible mitigation measures were proposed, with two exceptions. The first was a finding of 'moderate adverse' residual impact on harbour porpoise as a result of cumulative increased levels of underwater noise from construction activities. The Applicant noted that no additional mitigation measures were proposed,

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<sup>82</sup> The SNS cSAC became a SAC in February 2019.

<sup>83</sup> Goodwin Sands was a recommended MCZ at the point of submission of this application. It was formally designated as an MCZ on 31 May 2019.

beyond those embedded in the project design; *'as contribution from Thanet Extension is negligible and project specific mitigation would not change the level of effect significance'*<sup>84</sup>.

- 5.3.20. The second exception was the identification<sup>85</sup> of a possible significant effect in terms of habitat loss and disturbance on passage ringed plover<sup>86</sup> as part of the non-breeding birds feature of the Sandwich Bay and Hacklinge Marshes SSSI if construction, maintenance or decommissioning works were to take place in favoured areas at times when peak numbers of birds are present. Table 5.16 proposes: *'Passage ringed plover mitigation plan to be produced and agreed if works take place in favoured areas at times when peak numbers of birds are present (mid-April to May and August to September inclusive)'* [APP-061].
- 5.3.21. Both of these matters were subject to discussion during Examination. The final position on harbour porpoise is reflected under the 'Planning Issues' section of this chapter. In terms of ringed plover, the draft DCO was updated at D4 [REP4-003] to include DML conditions (23 and 27 in Schedule 12) requiring:
- pre-construction surveys to determine the location or presence of ringed plover inside the area(s) within the Order Limits in which it is proposed to carry out construction works; and
  - in the event that those surveys find that the species is present within the Order Limits, the production and approval by MMO of a ringed plover mitigation plan, the intention of which is to prevent disturbance to ringed plover.
- 5.3.22. The Explanatory Memorandum at D4 [REP4-009] noted that the need for these provisions to be secured had come to light during the Examination and this was confirmed orally at ISH8 [REP5-030]. The provisions are secured in DML (Schedule 12) Conditions 11(1)(m) and 15(2)(e) of the Applicant's final draft DCO [REP8-013].
- 5.3.23. Also of relevance is that the Applicant's 'Schedule of Mitigation', originally submitted as [APP-135], was subject to a number of revisions during Examination, with [REP7-017] representing the final position in terms of natural environment matters. The Schedule records all embedded and additional mitigation measures and specifies their origins and security. During Examination and in response to IP submissions, the Applicant agreed to include the Schedule as a document to be certified under Article 35 and Schedule 13 of the Applicant's final draft DCO [REP8-013].
- 5.3.24. On the matter of ancient woodlands and protected trees, the Applicant's position [REP1-017] is that, *'The onshore biodiversity scoping and phase 1*

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<sup>84</sup> Table 8.9 of [APP-049].

<sup>85</sup> Page 5-92 of [APP-061].

<sup>86</sup> Passage ringed plover' refers to the population which uses the site in spring and autumn as distinct from any population which remains to overwinter [APP-110].

surveys of the area considered the potential for veteran, ancient and other woodland trees to be present. The desk and field based surveys confirmed that there are no qualifying features within the zone of influence of the Project<sup>87</sup>. It therefore confirmed that there would be no net loss of ancient woodland or ancient or veteran trees within the zone of influence of the project<sup>88</sup>.

5.3.25. In terms of other trees and woodlands, the Applicant stated [REP1-017] that the maximum area mapped as woodland that could be affected by the Proposed Development (principally the onshore cable route) is approximately 0.37ha and in addition to this, four lines of trees would be affected. In both cases, the precise number, species and age of trees would not be known until the detailed design stage. The Applicant's position<sup>89</sup> was that mitigation for the potential loss of or damage to trees, and compensation in the form of approximately 0.36-0.41ha of new planting, would be secured through the LEMP and onshore substation landscaping requirement.

5.3.26. Turning to habitats and other species of principal importance for the conservation of biodiversity, the Applicant's baseline surveys [APP-046] identified two areas of potential *Sabellaria spinulosa* reef in the proposed array area, with one assessed as 'not reef'<sup>90</sup> and the other as having a low potential for reef. The Applicant notes [APP-049] that *Sabellaria spinulosa* reef has been previously identified around the application site, including within the existing TOWF array area. It further notes that Pegwell Bay, through which the offshore export cable route runs, is known to support an unusual reef assemblage of *Mytilus edulis* and *Sabellaria spinulosa*. Consequently, the Applicant's final draft DCO secured the following measures:

- pre-construction surveys to identify the presence of any biogenic reef features (Conditions 16(2)(a) (Schedule 11) and 15(2)(a) (Schedule 12) of the Applicant's final draft DCO [REP8-013]);
- a Biogenic Reef Mitigation Plan (BRMP) [REP4-025], with which construction and monitoring activities must accord and forming a certified document under Schedule 13 of the Applicant's final draft DCO [REP8-013]); and
- post-construction surveys to validate the success of micro-siting all infrastructure associated with the construction around areas identified as 'core reef' and determine the location and extent of any biogenic reef features within the Order Limits (Conditions 18(2) (Schedule 11) and 17(2)(a) (Schedule 12) of the Applicant's final draft DCO [REP8-013]).

5.3.27. As a result of these mitigation and monitoring measures, the Applicant assessed the effects on any *Sabellaria spinulosa* reef in terms of

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<sup>87</sup> Page 45 of [REP1-017].

<sup>88</sup> Page 48 and 77 of [REP1-017].

<sup>89</sup> Page 74-77 of [REP1-017].

<sup>90</sup> Paragraph 5.7.38 of [APP-046]



temporary habitat loss / disturbance during construction and in the operational phase as being of negligible adverse significance [APP-049].

### **Planning Issues**

- 5.3.28. None of the submitted LIRs raised any specific concerns with the Applicant's assessment or mitigation of effects on designated sites. In this regard the LIRs of TDC [REP1-128] and DDC [REP1-091] both stressed the importance of the DCO Requirement<sup>91</sup> securing the approval of a Landscape and Ecological Management Plan (LEMP) which must accord with the Outline Landscape and Ecological Management Plan (OLEMP) [REP1-069]. The OLEMP constitutes a certified document under Article 35 and Schedule 13 of the Applicant's final draft DCO [REP8-013]. The final submitted Schedule of Mitigation [REP7-017], which is also a certified document, includes a number of specific measures that must be included within the LEMP.
- 5.3.29. DDC's LIR [REP1-091] also welcomed the OLEMP's commitment at Section 6 [REP1-069] to provide biodiversity enhancements, focussed mainly within the Sandwich and Pegwell Bay NNR. This is a position echoed by KWT [REP6-010]. KCC's LIR [REP1-098] highlighted the ecological role of Pegwell Bay Country Park in hosting a large wildlife population, varied habitats and as a gateway to the NNR.
- 5.3.30. A significant amount of Examination time was spent considering the designated sites, species and habitats potentially affected in terms of the HRA. A full account of HRA matters is set out in Chapter 7 of this Report. To summarise, by the end of Examination, disagreement between NE and the Applicant remained in relation to the following matters [REP6-015; REP6-016; PD-018]:
- in-combination effect on the integrity of the Outer Thames Estuary SPA with regard to displacement of red-throated diver;
  - in-combination effect on the integrity of the Flamborough and Filey Coast SPA with regard to collision mortality of kittiwake and gannet; and
  - the management of mitigation for in-combination effect on the Southern North Sea SAC with regard to harbour porpoise.
- 5.3.31. Submissions were also received before and during Examination from the Government of France in relation to the potential effects on designated sites, species and habitats in France and French waters [OD-009; AS-006; REP1-094]. As primarily Natura 2000 matters external to the UK, the ExA's consideration of those effects is set out in full at Chapter 8 of this Report.
- 5.3.32. HRA matters and Natura 2000 matters external to the UK aside, a number of questions pertaining to designated sites were raised by NE in the initial stages of Examination [RR-053; REP1-113] to which the Applicant responded with clarification material and revised documents.

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<sup>91</sup> Requirement 23 of the Applicant's final draft DCO [REP8-013]

The final SoCG indicates agreement with NE [REP6-016] that all relevant designated sites have been identified and included within the Applicant's assessment. The SoCG also records agreement<sup>92</sup> that the conclusions of the assessment adequately reflect the potential impacts of the Proposed Development on designated sites for the lifetime of the project and that in-combination effects have been appropriately described. The final SoCG [REP6-016] further records agreement from NE in respect of all matters relating to benthic subtidal and intertidal ecology and onshore biodiversity.

- 5.3.33. The RSPB's position [RR-057] in respect of onshore ornithology was that: *'on the basis of the data provided, this project will have no significant impact on the (Thanet Coast and Sandwich Bay) SPA, Ramsar site or (Thanet Coast to Hacklinge Marshes) SSSI bird features'*. It did, however, raise concerns about the Applicant's assessment of offshore ornithological effects in the context of HRA and these points are dealt with in Chapter 7 of this Report.
- 5.3.34. KWT maintained a position throughout Examination that the Applicant's approach to site selection and alternatives [APP-040] was flawed and its choice of Pegwell Bay as the landfall location for the export cable route did not give sufficient weight to ecological considerations and particularly the effects on designated sites. It stated: *'We believe that alternative routes with less of an impact on designated areas have not been adequately assessed'* [RR-048].
- 5.3.35. Despite responses from the Applicant, including the removal of Landfall Option 2, KWT's position was sustained in [REP1-102], [REP2-040], orally at ISH3 [EV-026; EV-027; EV-028]; [REP3-081] and in its final SoCG [REP6-010]. The latter document records that *'a cable landfall assessment was only carried out based on the Pegwell Bay landfall option. We believe in order to make a well-informed decision a cable landfall assessment should have also been carried out at the Sandwich Bay landfall option'*.
- 5.3.36. The National Trust also disputed the Applicant's approach to site selection and alternatives, stating at Table 3 of [REP6-014]: *'The National Trust does not consider that para 2.6.81 of the Renewable Energy Infrastructure (NPS EN-3) statement has been adequately addressed. It is considered that the explanation for the choice of cable landfall across the Pegwell Bay inter-tidal mud flats (owned by the National Trust) is insufficient'*. This position was not changed by the removal of Landfall Option 2.
- 5.3.37. Concerns about the Applicant's approach to site selection and alternatives were also noted in NE's initial submissions [RR-053], particularly regarding the rationale for discounting Sandwich Bay as an alternative landfall location. However, these concerns fell away following the removal of Landfall Option 2 at D1. Table 4 of the relevant NE SoCG [REP6-019] reflects general agreement that the Applicant has provided an adequate account of its decision-making process in relation to site

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<sup>92</sup> Note that MCZ effects were dealt with separately in the NE SoCG.

selection. This is a position echoed by KCC [REP6-009], TDC [REP3-045] and DDC [REP3-086]. The Applicant's final position [REP8-003] is that '*the alternatives have been assessed at an appropriate level of detail*'<sup>93</sup> to satisfy the provisions of section 4.4 of NPS EN-1 and the Habitats Regulations.

- 5.3.38. There were no other substantive concerns raised through the submissions of other IPs in relation to the Applicant's assessment of effects on internationally, nationally, regionally or locally designated sites.
- 5.3.39. The Applicant's revisions to the DCO during Examination with regard to ringed plover as a notified feature of the Sandwich Bay and Hacklinge Marshes SSSI, as described in the previous section of this chapter, were welcomed by NE [REP5-066]. The ExA also formally sought [EV-045] KWT's views on the additions but did not receive a specific response on this point.
- 5.3.40. In relation to the harbour porpoise matters raised in the previous section of this chapter, the final SoCG with NE [REP6-016] recorded agreement in terms of the EIA for marine mammals that no further mitigation is necessitated as a result of the EIA conclusions for the Proposed Development considered alone or cumulatively. The implications of this position in respect of the HRA are dealt with in Chapter 7 of this Report.
- 5.3.41. Turning to effects on ancient woodland and protected trees, a number of matters were raised by the Forestry Commission (FC) [RR-019] and the Applicant provided a point-by-point response at Table 20 of [REP1-017]. No further submissions were made by the FC during Examination and no additional concerns in relation to biodiversity effects on woodlands and trees were raised by other IPs.
- 5.3.42. On the matter of the effects on habitats of conservation importance, and particularly *Sabellaria spinulosa* reef, the BRMP was revised twice during Examination to address comments from NE [RR-053] and KWT [REP1-102]. The final version, which is a certified document under Article 35 and Schedule 13 of the Applicant's final draft DCO, is [REP4-025]. The NE SoCG [REP6-016] confirms that this revision C version of the BRMP had addressed NE's earlier concerns about the core reef approach and the KWT SoCG [REP6-010] also records agreement about the content and security of the BRMP.

### **ExA Response**

- 5.3.43. The ExA has had full regard to the submissions covering all matters relating to the potential effects on designated sites and protected habitats. The matters as they relate to HRA are dealt with at Chapter 7 of this Report. The matters as they relate to MCZs are considered separately in a subsequent section of this chapter.

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<sup>93</sup> Paragraph 27 of [REP8-003].

- 5.3.44. The ExA has carefully considered the matters raised by KWT and NT in relation to the adequacy of the Applicant's assessment with regard to site selection and alternatives for the export cable landfall location. These submissions prompted the ExA to ask further questions of the Applicant both orally at ISH3 [[EV-026](#); [EV-027](#); [EV-028](#)] and in writing [[PD-012](#)]; in order to test its approach and conclusions.
- 5.3.45. The ExA notes that by the end of Examination, the Applicant had reached general agreement with NE, KCC, TDC and DDC that it had given adequate consideration to alternative landfall locations in making decisions on the project design. The ExA observes that the submitted ES [[APP-040](#)] included information on the main alternatives that had been studied, including an explanation of the process followed for the landfall and onshore cable area of search, and giving due consideration to the effects on designated sites. This was supplemented by the Applicant's response to ExQ1.1.1 [[REP1-024](#)] which set out further reasoning in respect of the comparative effects on designated nature conservation sites and intertidal habitats.
- 5.3.46. In this sense, the ExA's clear view is that the provisions of paragraph 4.4.2 of NPS EN-1 have been met. Since significant harm to biodiversity is not anticipated as a result of the Proposed Development, there is compliance with the provisions of paragraph 5.3.7 of NPS EN-1. The ExA is also satisfied that the Applicant has provided adequate information about alternative landfall sites and an explanation for the final choice when installing cables across the intertidal zone in accordance with paragraph 2.6.81 of NPS EN-3. For the same reasons, it is the ExA's view that reasonable alternatives have been considered as required by the MPS.
- 5.3.47. Overall, the ExA finds that the Applicant's assessment has adequately set out the effects on internationally, nationally and locally designated sites of ecological and geological conservation importance and that appropriate mitigation for any identified effects is properly secured. In coming to this view, the ExA has had regard to material submitted during Examination and the final position in terms of the Schedule of Mitigation [[REP7-017](#)] and the Applicant's final draft DCO [[REP8-013](#)], which includes, for example, the new provisions in relation to ringed plover.
- 5.3.48. Given that the ringed plover provisions affect principally the intertidal area, in which there are overlapping jurisdictions of terrestrial and marine discharging authorities, the ExA considers it necessary to mirror the substance of the DML conditions in a DCO requirement. This is consistent with the ExA's approach to security for other mitigation measures in the intertidal area, such as the SMRMP and the seasonal restriction in respect of non-breeding waterbirds. Accordingly, Requirement 16 of the ExA's proposed changes to the dDCO has been amended to include a parallel provision for ringed plover to that proposed by the Applicant for inclusion by way of DML conditions.
- 5.3.49. The ExA is content that the Applicant has demonstrated how the Proposed Development has taken, and would continue to take,

advantage of opportunities to conserve and enhance biodiversity and geological conservation interests, not least through the OLEMP, which has agreement from the principal relevant parties.

5.3.50. Having reviewed the relevant evidence, the ExA is clear that the Proposed Development would not result in the loss or deterioration of any ancient woodland or aged or veteran trees, and that suitable provisions are in place to mitigate and compensate for the loss of other trees or woodland during the construction period through the LEMP and onshore substation landscaping Requirement.

5.3.51. The ExA is also satisfied that the Applicant has clearly identified the potential effects on habitats and other species of principal importance for the conservation of biodiversity, in line with section 5.3 of NPS EN-1. Specifically, the ExA finds that the BRMP [[REP4-025](#)] provides appropriate mitigation, is agreed with relevant parties and is properly secured in the Applicant's final draft DCO.

5.3.52. Taking all of the above findings together, the ExA concludes that the relevant policy and legislative tests set out earlier in this section have been met. Additionally, the ExA has no evidence to indicate that there would be any conflict with Policy NC6 of the adopted Thanet Local Plan 2006 or with the emerging biodiversity policies of the draft Thanet Local Plan 2019. The ExA also has no evidence before it to suggest that the Proposed Development would be contrary to any relevant development plan policies produced by DDC or KCC.

### **Conclusion on Designated Sites Effects**

5.3.53. Taking all relevant documents and policies into account, the ExA draws the following conclusions in relation to potential effects on designated sites:

- any adverse impacts on designated sites and features are effectively mitigated and that mitigation is appropriately secured;
- the relevant legislative and policy tests, most notably those contained in sections 4.4 and 5.3 of NPS EN-1, 2.6 of the MPS and the MPS, have been met;
- a minor change to the DCO is proposed, to ensure that provisions in relation to ringed plover mitigation are secured by DCO requirement as well as by DML condition; and
- on balance, the topic is a neutral consideration in the overall planning balance.

## **Marine Conservation Zones**

### **Introduction**

5.3.54. This sub-section addresses the effects of the Proposed Development on Marine Conservation Zones.

### **Policy Considerations**

5.3.55. MCZs have statutory protection as 'areas that have been designated for the purpose of conserving marine flora or fauna, marine habitats or types of marine habitat or features of geological or geomorphological interest'<sup>94</sup>. NPS EN-1 states<sup>95</sup> that, 'The applicant should be particularly careful to identify any effects of physical changes on the integrity and special features of Marine Conservation Zones...'. EN-1 also highlights<sup>94</sup> that decisions in respect of NSIPs are bound by the duties imposed under ss 125 and 126 of the MACAA2009.

5.3.56. Sections 125 and 126 of the MACAA2009 set out the duties of public authorities in relation to MCZs. In summary terms, they stipulate that public authorities that have the function of determining applications for activities capable of affecting MCZs must not grant authorisation unless:

*'there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ.'*<sup>96</sup>

Where this test cannot be passed, the Act sets out further criteria which must be satisfied before authorisation can be granted.

5.3.57. The MPS provides protection for MCZs as part of an ecologically coherent network of Marine Protected Areas (MPAs) across the UK marine environment. It emphasises that, together with international protected sites, this network of MPAs will be a key tool in contributing to achieving good environmental status as required by the Marine Strategy Framework Directive (MSFD)<sup>97</sup>. It goes on to state that '*decision makers should take account of how developments will impact on the aim to halt biodiversity loss and the legal obligations relating to all MPAs, their conservation objectives, and their management arrangements*'.

5.3.58. Marine Plans are identified as an important tool for the protection of MCZs. As reported in Chapter 3 of this Report, no draft of the South East Inshore Marine Plan was published before the Examination closed [[REP6A-008](#)].

5.3.59. The protected features and conservation objectives for each MCZ are stated in a designation order, which provides statutory protection for these areas. Of particular relevance to the Proposed Development are:

- The Thanet Coast Marine Conservation Zone Designation Order 2013 (as amended)<sup>98</sup>; and
- The Goodwin Sands Marine Conservation Zone Designation Order 2019<sup>99</sup>.

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<sup>94</sup> Paragraph 5.3.12 of NPS EN-1.

<sup>95</sup> Paragraph 5.5.9 of NPS EN-1.

<sup>96</sup> MACAA2009 as amended, s126(6).

<sup>97</sup> Paragraph 3.1.2 of the UK MPS.

<sup>98</sup> [The Thanet Coast Marine Conservation Zone Designation Order 2013](#) has been amended by [The Thanet Coast Marine Conservation Zone Designation \(Amendment\) Order 2019](#).

<sup>99</sup> [The Goodwin Sands Marine Conservation Zone Designation Order 2019](#).

- 5.3.60. Thanet Coast MCZ wraps around the northern and eastern coast of Thanet and partially overlaps with the Thanet Coast SAC. As illustrated on Figure 5.3.1 below, a section of approximately 0.7 km<sup>2</sup> of the offshore export cable corridor overlaps with the most southerly part of the MCZ [APP-083]. The protected features and conservation objectives of the MCZ are listed at article 5(1) of the designation Order<sup>100</sup> and article 2 of the amendment Order<sup>101</sup>.
- 5.3.61. Goodwin Sands MCZ covers an area of approximately 277 km<sup>2</sup>. Its location is shown in Figure 5.3.2 below. The offshore export cable corridor for the Proposed Development overlaps with an area in the north-western corner of the Goodwin Sands MCZ of approximately 1.13 km<sup>2</sup>. The protected features and conservation objectives of the MCZ are listed at article 5 and Schedule 2 of the designation Order<sup>102</sup>.

### **The Applicant's Case**

- 5.3.62. The application included an MCZ Assessment [APP-083], which was designed to be read alongside ES chapters [APP-046; APP-043; APP-044; and APP-049]. The Applicant sought to follow the approach set out in MMO Guidance<sup>103</sup>, which promotes a sequential three-stage assessment process. A screening assessment constituting the first of those stages identified that the following sites were capable of being affected by the Proposed Development:

- Thanet Coast MCZ; and
- Goodwin Sands recommended MCZ (rMCZ).

For each site, a 'stage one' assessment was undertaken.

### **Thanet Coast MCZ**

- 5.3.63. The Applicant screened the following impacts into the stage one assessment [APP-083]:
- Construction:
    - temporary habitat loss/ disturbance due to anchor placements in the Thanet Coast MCZ; and
    - temporary increases in suspended sediment concentration (SSC) and associated sediment deposition.
  - Operation:
    - direct disturbance to the seabed from cable maintenance activities.

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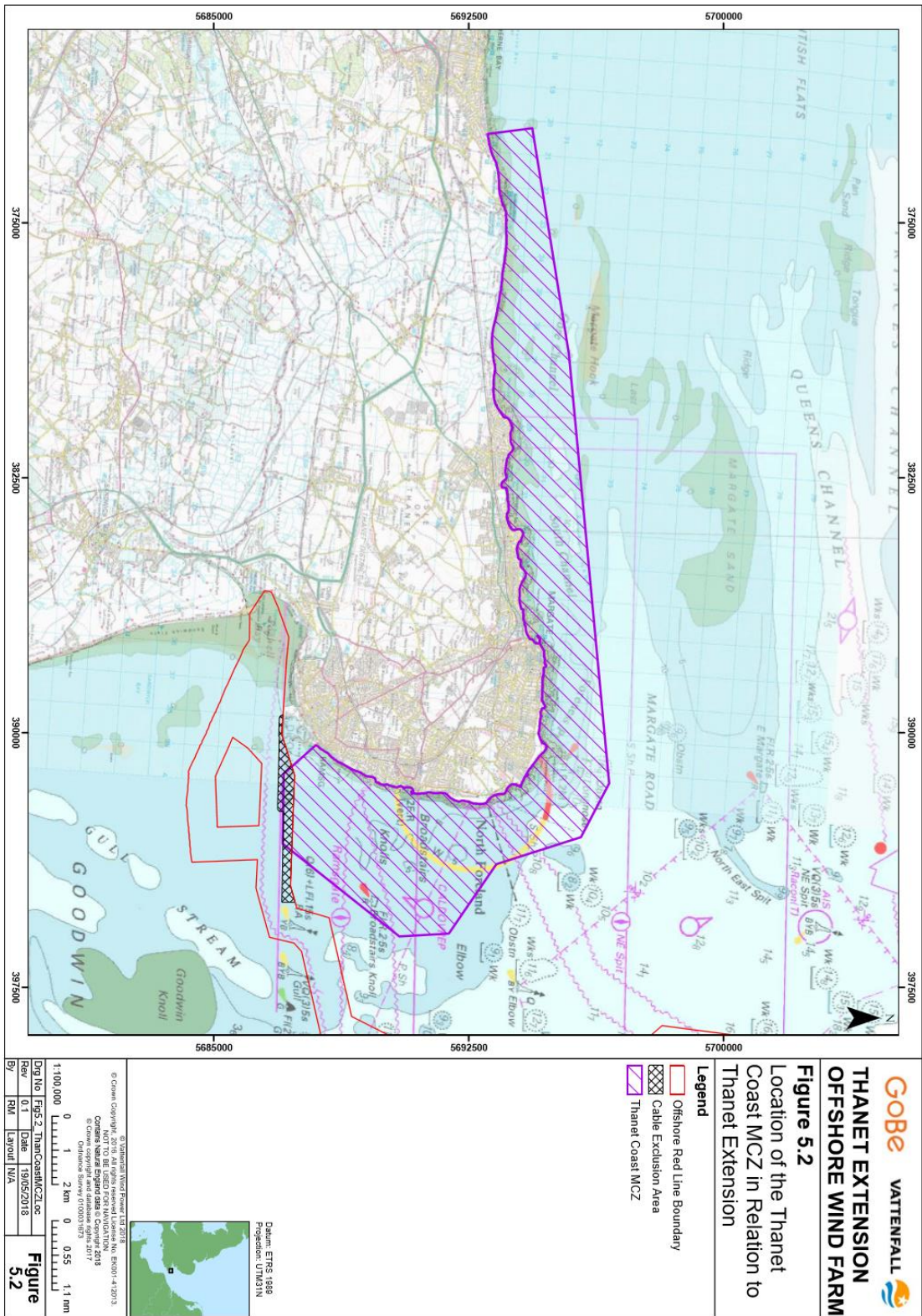
<sup>100</sup> [The Thanet Coast Marine Conservation Zone Designation Order 2013](#).

<sup>101</sup> [The Thanet Coast Marine Conservation Zone Designation \(Amendment\) Order 2019](#).

<sup>102</sup> [The Goodwin Sands Marine Conservation Zone Designation Order 2019](#) ()

<sup>103</sup> 'Marine Conservation Zones and Marine Licensing', MMO (April 2013)

**Figure 5.3.1: Location of Thanet Coast MCZ relative to the Proposed Development Order Limits<sup>104 105</sup>**

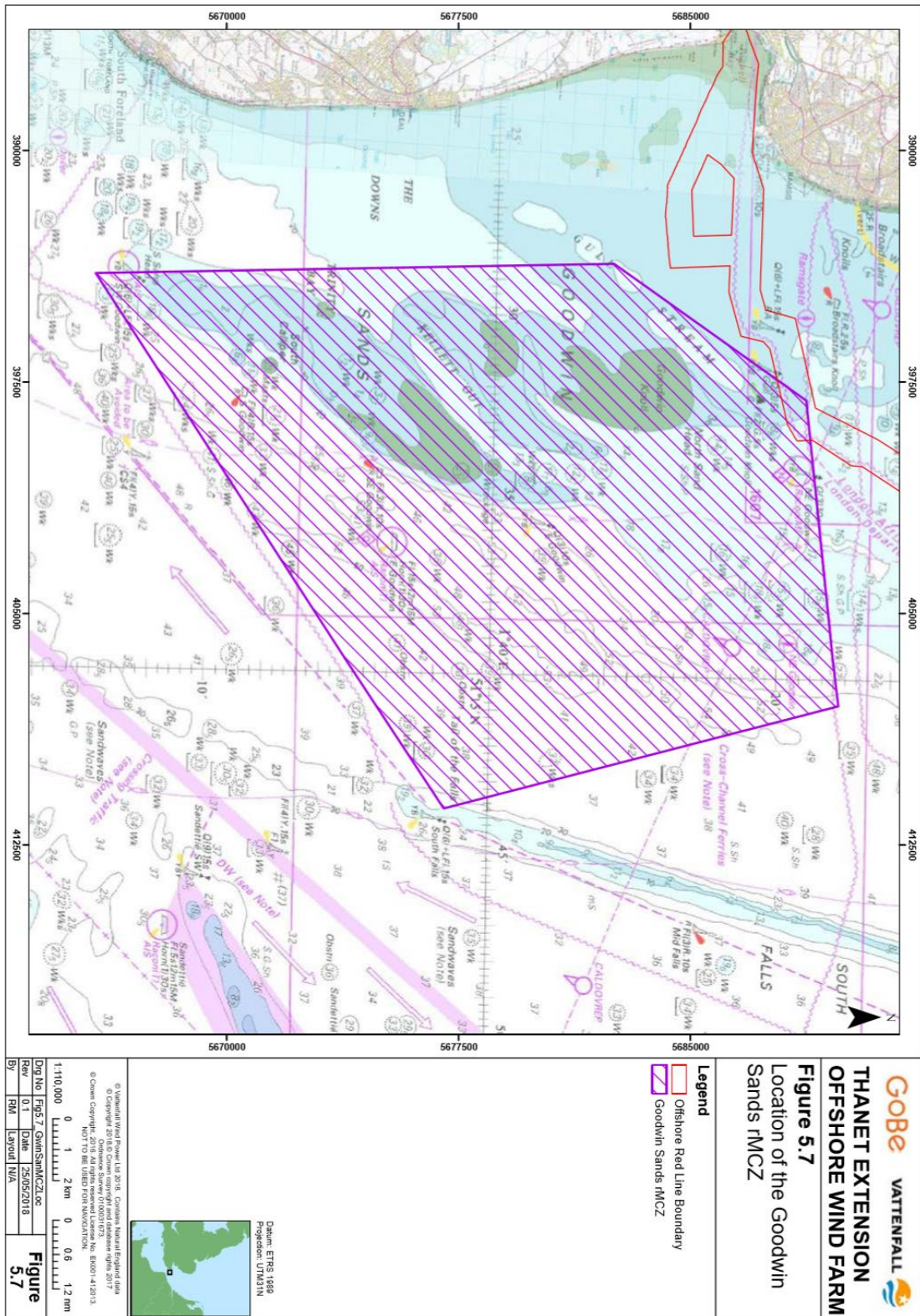


<sup>104</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>105</sup> Figure 5.2 of [APP-083].



**Figure 5.3.2: Location of the Goodwin Sands MCZ relative to the Proposed Development Order Limits<sup>106 107</sup>**



<sup>106</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.  
<sup>107</sup> Taken from Figure 5.7 of [APP-083].

- Decommissioning:
  - potential impacts are predicted to be not greater than those predicted for the construction and operation phases.

5.3.64. The stage one assessment found that in all respects the effects would be of minor adverse significance, and that no significant risk of hindrance to the achievement of the MCZ's conservation objectives would arise. Consequently, the assessment did not proceed to stage two [[APP-083](#)].

5.3.65. The Applicant's assessment in respect of effects on Thanet Coast MCZ was supplemented during Examination by two principal submissions:

- a revised MCZ Clarification Note at D5 [[REP5-047](#)], responding to ISH8 Action Points and NE comments; and
- an MCZ Assessment Audit at D8 [[REP8-022](#)], setting out a summary of the assessment for each protected feature.

Condition 21 of the Applicant's final draft DML for the Export Cable System (Schedule 12) [[REP8-013](#)] secured the implementation of a Cable Exclusion Zone (CEZ) (referred to in other application documents as a 'Cable Exclusion Area') within the offshore export cable corridor (shown hatched black on Figure 5.3.1, which covered the entire area of overlap between the MCZ and the Order Limits. Within the CEZ, no cable installation or protection works would be permitted, but anchor placements during construction, maintenance and decommissioning periods would be allowed.

5.3.66. Aside from the CEZ, no specific provision was made in the final draft DCO/DMLs for mitigation or monitoring in respect of the Thanet Coast MCZ. The Applicant's position at the end of Examination [[REP8-022](#)] was that there would be no hindrance to the conservation objectives of the Thanet Coast MCZ and that the relevant legislative and policy tests had been satisfied.

### ***Goodwin Sands MCZ***

5.3.67. At the point of application (June 2018), Goodwin Sands was identified as a rMCZ, and as such was not statutorily designated. In the absence of formal conservation objectives, the Applicant undertook a proxy MCZ Assessment for the zone [[APP-083](#)], using the same two stage process outlined in respect of the Thanet Coast MCZ and drawing together the assessments of the potential impacts on the habitats and features of the rMCZ presented in [[APP-046](#)], [[APP-047](#)] and [[APP-048](#)] in the absence of any conservation objectives.

5.3.68. The Assessment screened the following impacts into the stage one assessment:

- Construction:
  - temporary habitat loss/ disturbance due to cable installation activities in the zone; and
  - temporary increases in SSC and associated sediment deposition.

- Operation:
    - long-term habitat loss due to the presence of cable/ scour protection in the zone; and
    - direct disturbance to the seabed from cable maintenance activities.
- 5.3.69. The stage one assessment found that in all respects the effects would be of minor adverse significance, and on this basis the assessment did not proceed to stage two [[APP-083](#)].
- 5.3.70. In November 2018 (during Examination but prior to D1), Goodwin Sands became a proposed MCZ (pMCZ) [[REP1-113](#)] and on 31 May 2019 (shortly before D6A of the Examination) it was formally designated as an MCZ [[REP8-022](#)], with statutorily defined protected features and conservation objectives<sup>99</sup>.
- 5.3.71. In recognition of this change in status during the Examination, and in response to ongoing concerns of NE about the adequacy of the original MCZ assessment for Goodwin Sands, the Applicant made a series of Examination submissions on this topic. Below is a brief chronology of the Applicant's primary documents in this regard:
- an MCZ Assessment Clarification Note at D2 [[REP2-006](#)] which revised the original MCZ assessment in respect of Goodwin Sands;
  - a revised MCZ Clarification Note at D4 [[REP4-024](#)] which sought to address ongoing concerns raised by Natural England;
  - a further revised MCZ Clarification Note at D5 [[REP5-047](#)], responding to ISH8 Action Points, together with a 'Sandwave Clearance, Dredging and Drill Arising: Disposal Site Characterisation' document [[REP5-038](#)];
  - at D6, a response to NE comments on the pMCZ [[REP6-017](#)]; and
  - at D8, an MCZ Assessment Audit [[REP8-022](#)], which for each protected feature sets out a summary of the assessment and signposts to the detail contained in earlier Examination submissions.
- 5.3.72. As a result of the revised assessment and in response to submissions from IPs, the Applicant added provisions to the draft DML for the Export Cable System (Schedule 12) [[REP8-013](#)] committing to undertake pre- and post-construction monitoring for certain works within the MCZ.
- 5.3.73. The Applicant's position at the end of Examination [[REP8-022](#)] was that in light of this additional work and the commitments within the DCO/DML, there would be no hindrance to the conservation objectives of the Goodwin Sands MCZ and that as such the relevant legislative and policy tests had been met.

### **Planning Issues**

- 5.3.74. There was no dispute that the Applicant's screening exercise had correctly identified all of the MCZs potentially affected by the Proposed Development [[APP-083](#)].
- 5.3.75. There was, however, a considerable degree of concern throughout the Examination about the Applicant's MCZ assessment, particularly in

relation to Goodwin Sands and most notably raised by NE and KWT. No substantive comments about the MCZ effects were raised through the submitted LIRs [[REP1-091](#); [REP1-098](#); [REP1-128](#)].

#### Thanet Coast MCZ

- 5.3.76. During Examination, KWT [[REP1-102](#)] raised concerns about the assumptions within the MCZ assessment about the presence of subtidal chalk (as a protected feature of the MCZ) within the Order Limits. It stated: *‘(w)e disagree with the assumption that any subtidal chalk present is chalk bedrock overlain with sediment and therefore doesn’t meet the definition of chalk reef’*. In responding, the Applicant [[REP2-013](#)] pointed to site-specific survey data dating from 2016 which did not identify any exposed bedrock in the area of overlap between the MCZ and the Order Limits. KWT’s objection in this regard appeared not to be sustained and by the end of Examination, there was no explicit concern recorded by KWT in respect of the Thanet Coast MCZ [[REP6-010](#)].
- 5.3.77. NE’s RR [[RR-053](#)] included Thanet Coast MCZ in a list of designated features for which it had outstanding concerns but did not elaborate on the reasons for its concern either within the RR or in its subsequent written representation [[REP1-113](#)]. At D6 there was general agreement between the Applicant and NE [[REP6-016](#)] that the conclusions of the MCZ assessment adequately reflect the potential impacts of the Proposed Development on the Thanet Coast MCZ and that cumulative effects on the site had been appropriately assessed.

#### Goodwin Sands MCZ

- 5.3.78. The principal IPs engaged on this topic were NE, KWT and MMO. The core matters raised in relation to Goodwin Sands MCZ can be summarised as:
- whether sufficient information had been provided to enable an assessment of effects of export cable installation on protected subtidal habitat features of the MCZ, particularly in respect of cable rock protection and material displaced by dredging and pre-sweeping (NE [[RR-053](#)]);
  - whether additional pre- and post-construction monitoring beyond that originally proposed in the application documents was required within the DCO/DMLs to confirm the presence of sensitive habitats, enable cable micro siting and monitor habitat recovery (NE [[RR-053](#)]; MMO [[REP5-062](#)]); and
  - what cumulative effects might arise, specifically in light of a recent marine licence awarded in connection with the Dover Harbour Western Docks Redevelopment scheme for aggregate extraction at Goodwin Sands (NE [[RR-053](#)]; KWT [[RR-048](#)]).
- 5.3.79. The ExA examined the issues through written questions [[PD-012](#); [PD-016](#); [PD-019](#); [PD-020](#)] and orally at ISH3 [[EV-026](#); [EV-027](#); [EV-028](#)] and ISH8 [[EV-050](#)]. As detailed earlier in this section, the Applicant submitted a series of documents during Examination to supplement the MCZ

assessment, respond to IP submissions and reflect the changing status of the MCZ over that period.

5.3.80. On the first of the bullet points above, the last SoCG between NE and the Applicant covering MCZ matters was submitted at D6. It recorded outstanding disagreement on the assessment, findings and baseline data in respect of the Goodwin Sands MCZ, stating [[REP6-016](#)]: *'Natural England deem the original baseline data was inadequate to characterise the Goodwin Sands pMCZ. However, the applicant has committed to collect further preconstruction data that will fill some of the data gaps and allow for any impacts of the proposed activities to be properly measured and assessed'*. Concerns were also evident in relation to monitoring, assessment methodology and outcomes.

5.3.81. Although not captured in a SoCG, dialogue between the parties continued beyond D6 and is noted from the respective submissions at D7 and D8. Paragraph 5.4 of NE's [[REP7-037](#)] states:

*'Overall, whilst Natural England do not necessarily disagree with the conclusions of the assessment, it is difficult without a sufficient audit trail for Natural England to be confident in advising we fully agree with the conclusions presented by the Applicant. If this summary is not produced, then Natural England advise that decision makers should cross reference the assessments undertaken with the Thanet Coast conservation advice package in order to ensure that all impact pathways have been considered.'*

5.3.82. At D8, the Applicant submitted the requested MCZ assessment audit [[REP8-022](#)]. The Applicant stated [[REP8-006](#)] that the audit document had been reviewed by NE prior to submission into the Examination, and an additional submission from NE [[AS-024](#)] on the last day of Examination confirmed that it had briefly reviewed the document. NE commented that *'Natural England agrees that the assessment has focussed on the main pressures and attributes for both the Thanet Coast MCZ and Goodwin Sands MCZ'*, but went on to note some remaining areas of discomfort at paragraphs 5.3-5.5 of [[AS-024](#)].

5.3.83. These matters include the presentation of data about the worst-case scenario for habitat loss due to cable protection, and about the impact on each individual protected feature, for example in terms of suspended sediments and smothering. The evidence underpinning assumptions around the infilling of cable rock protection over time was also brought into question [[AS-024](#)]. The Examination closed without a resolution to these matters.

5.3.84. Turning to the second bullet point, as a result of the discussions regarding the MCZ assessment, the Applicant added provisions to the draft DML for the Export Cable System (Schedule 12) (most latterly recorded in [[REP8-013](#)]) committing to undertake:

- pre-construction monitoring and surveys in the event that cable protection is to be installed or sandwave clearance is required within the MCZ (Condition 15(2)(b)(i)-(ii))

- post-construction monitoring in the event that cable protection is to be installed or sandwave clearance is required within the MCZ (Condition 17(2)(b)(i)-(ii))
- epifaunal monitoring and ground truthed geophysical surveys carried out for a total period of three years post-construction (Condition 17(5)).

- 5.3.85. In broad terms, these additional monitoring provisions were welcomed by the MMO [REP7-035] and NE [REP7-040]. A specific comment on the additional monitoring was not received by KWT but a position of general agreement on MCZ topics is recorded in [REP6-010], with the exception of the cumulative assessment outcomes, which are dealt with in the following paragraphs.
- 5.3.86. The last SoCG between the MMO and the Applicant was also submitted at D6 [REP6-011] and recorded some disagreement about the DML wording in relation to monitoring provisions for the MCZ. Subsequent submissions [REP7-035] welcomed revisions to the wording subject to minor further amendments.
- 5.3.87. Turning to the third bullet point, the question of potential cumulative effects with licensed dredging activity elsewhere in Goodwin Sands was sustained by KWT throughout the Examination. The ExA explored the matter orally at ISH3 [EV-026; EV-027; EV-028; EV-019]. The MMO submitted [REP3-078] that, *'It is anticipated that dredging will take place in one or more distinct campaigns between September 2019 and September 2020...The licence start date is 26 July 2018 and end date is 31 December 2022'*. The Applicant remained of the view [REP4-005] that the best available information on the timing of the project indicated that it would be completed before September 2020 and there would therefore be no temporal overlap between the two projects.
- 5.3.88. At ISH8, the ExA queried whether the Judicial Review of the MMO's decision to grant a licence for dredging for the Dover Harbour Western Docks Redevelopment scheme could have the potential to delay that project and give rise to temporal overlap with construction of the Proposed Development [EV-050]. The Applicant maintained its position at [REP5-030] and section 1.6 of [REP5-047].
- 5.3.89. Whilst it was accepted that there would be no spatial overlap between the Order Limits of the Proposed Development and the boundary of the Dover Harbour aggregate extraction area, KWT contended that *'the site as a whole will still be affected by both of these activities. Also, timelines can change, and there is still a chance that there will be some temporal overlap'* [REP6-010].
- 5.3.90. The Applicant's final position [REP8-022] was that the *'in-combination assessment with Dover Harbour Western Docks Re-development scheme concluded no hinderance to conservation objectives, as the contribution of Thanet Extension to this cumulative effect is small, and there is no temporal overlap between the two projects (though there is the potential for the site to be in a state of recovery when the Applicants proposed works begin) with cumulative recovery is expected within 2-3 years'*.

## **ExA Response**

### ***Thanet Coast MCZ***

- 5.3.91. Having regard to all of the evidence, including the CEZ secured at Condition 21 of the Applicant's final draft DML for the Export Cable System (Schedule 12) [[REP8-013](#)], the ExA is satisfied that the Applicant's conclusions in relation to the effects on the Thanet Coast MCZ are robust. It is therefore the ExA's view that there would not be a significant risk of hindrance to the achievement of the conservation objectives stated for the Thanet Coast MCZ as a result of the Proposed Development. Consequently, the ExA is content that the relevant legislative and policy tests, including the requirements of MACAA2009, NPS EN-1 and the MPS, as set out earlier in this section, have been met.

### ***Goodwin Sands MCZ***

- 5.3.92. The ExA has given careful consideration to the submissions from all parties in respect of the Goodwin Sands MCZ in light of its ecological importance and statutory protection.
- 5.3.93. The changing status of the MCZ, from a recommended then proposed designation to a formal designation during the course of the Examination, has resulted in difficulties for the Applicant in keeping its MCZ assessment up-to-date and for IPs in responding to revised assessment material within the constraints of the Examination timetable. The ExA acknowledges that there would ideally have been further refinement to the presentation of some elements of the MCZ assessment, without which NE has been unable to give full agreement to its conclusions. This relates particularly to the matters set out at paragraphs 5.3-5.5 of [[AS-024](#)].
- 5.3.94. After considering all of the evidence, and having regard to [[REP8-022](#)] which draws together all parts of the assessment, the ExA considers that sufficient information has been provided to enable an assessment of effects on the protected features of the MCZ.
- 5.3.95. NE's concern about the evidential basis for the Applicant's assumptions with regard to the infilling of rock protection is noted. However, the ExA is mindful that the assumptions have drawn on monitoring undertaken for the existing Thanet Offshore Wind Farm and that the area of the MCZ potentially affected by the Proposed Development is limited in extent, relative to the total MCZ area. Under the Applicant's worst case scenario, the installation of cable protection '*would result in the loss of ~0.07 km<sup>2</sup> of seabed within the MCZ, equivalent to 0.025% of the total area of the site*' [[REP8-022](#)], based on a series of assumptions that the ExA agrees are highly conservative.
- 5.3.96. Importantly, the ExA is satisfied that an appropriate suite of pre- and post-construction monitoring is properly secured in the DML for the Proposed Development to monitor recovery in the event that cable protection was required in the MCZ (Conditions 15(2)(b)(i)-(ii), 17(2)(b)(i)-(ii) and 17(5) of [[REP8-013](#)]). Protection for the features of

Goodwin Sands MCZ is also provided by the BRMP which is secured by the DMLs and deals with any protected biogenic reef features (*Sabellaria spinulosa*)[[REP4-025](#)].

- 5.3.97. In terms of cumulative effects, the ExA accepts that there is some uncertainty as the precise timing of the licensed aggregate extraction works in connection with the Dover Harbour Western Docks Redevelopment scheme, not least due to Judicial Review proceedings of that decision, the timings for which remained unclear at the end of the Examination. However, the ExA notes the considerable physical separation between the two sites, the relatively short timescale for anticipated recovery of affected habitats (estimated to be within 2-3 years) and the publicly available information about that scheme, which the ExA is content constitutes the best available evidence. On this basis, the ExA is satisfied that the Applicant's position in respect of cumulative MCZ effects is robust.
- 5.3.98. Therefore, having regard to all of the above matters and taking account of all security in the DCO/DML, it is the ExA's considered view that the Proposed Development would not present a significant risk of hindrance to the achievement of the conservation objectives stated for the Goodwin Sands MCZ. As a result, the ExA finds that the relevant legislative and policy tests, most notably at MACAA2009, NPS EN-1 and the MPS, are satisfied.

### **Conclusion on Marine Conservation Zone Effects**

- 5.3.99. Taking all relevant evidence and policies into account, the ExA concludes as follows:
- there would not be a significant risk of hindrance to the achievement of the conservation objectives stated for the Thanet Coast MCZ or the Goodwin Sands MCZ as a result of the Proposed Development;
  - consequently, the relevant legislative and policy tests at MACAA2009, NPS EN-1 and the MPS, are met;
  - adequate security for mitigation and monitoring is provided within the Applicant's final draft DCO/DMLs and no changes are required; and
  - on balance, this is a neutral consideration in the overall planning balance.

## **Intertidal Habitats and Ecology**

### **Introduction**

- 5.3.100. This sub-section addresses the effects of the Proposed Development on intertidal habitats and ecology.

### **Policy Considerations**

- 5.3.101. The export cables bringing electricity ashore as part of the Proposed



Development would cross the intertidal zone<sup>108</sup> at Pegwell Bay, which comprises an extensive saltmarsh habitat.

- 5.3.102. The primary policy basis for consideration of effects on intertidal habitats and ecology is found at paragraphs 2.6.78 to 2.6.89 of NPS EN-3<sup>109</sup>. EN-3 indicates that while effects on intertidal habitats cannot be avoided entirely in relation to offshore wind generation, the conservation status of intertidal habitat is of relevance to the decision maker. It states<sup>110</sup> that the decision maker:

*'... should be satisfied that cable installation and decommissioning has been designed sensitively taking into account intertidal habitat.'*

*'Where adverse effects are predicted during the installation or decommissioning of cables, in coming to a judgement, the IPC should consider the extent to which the effects are temporary or reversible.'*

- 5.3.103. As shown in Figure 5.3.3 below, the ecological importance of the intertidal zone at Pegwell Bay is reflected in its designation [[APP-016](#)] as part of:

- Thanet Coast and Sandwich Bay SPA;
- Thanet Coast and Sandwich Bay Ramsar;
- Sandwich Bay SAC;
- Sandwich and Pegwell Bay NNR;
- Sandwich Bay to Hacklinge Marshes SSSI; and
- Sandwich and Pegwell Bay KWT Reserve (non-statutory designation).

- 5.3.104. The application notes [[APP-147](#)] that the saltmarsh habitat at the cable landfall location *'is included as a supporting habitat for roosting and feeding activity for the designated bird species golden plover and turnstone within the Thanet Coast and Sandwich Bay SPA/ RAMSAR [sic] and is also a feature of the Sandwich Bay to Hacklinge Marshes SSSI'*<sup>111</sup>.

- 5.3.105. The effects on European Sites are considered fully in Chapter 7. In relation to nationally-protected sites including SSSIs and NNRs, NPS EN-1 notes<sup>112</sup> that: *'Many SSSIs are also designated as sites of international importance and will be protected accordingly. Those that are not, or those features of SSSIs not covered by an international designation, should be given a high degree of protection. All National Nature Reserves are notified as SSSIs'*. It goes on to state that: *'Where a proposed development on land within or outside an SSSI is likely to have an*

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<sup>108</sup> Described within para 2.6.79 of NPS EN-3 as *'the area between high tide and low tide marks'*.

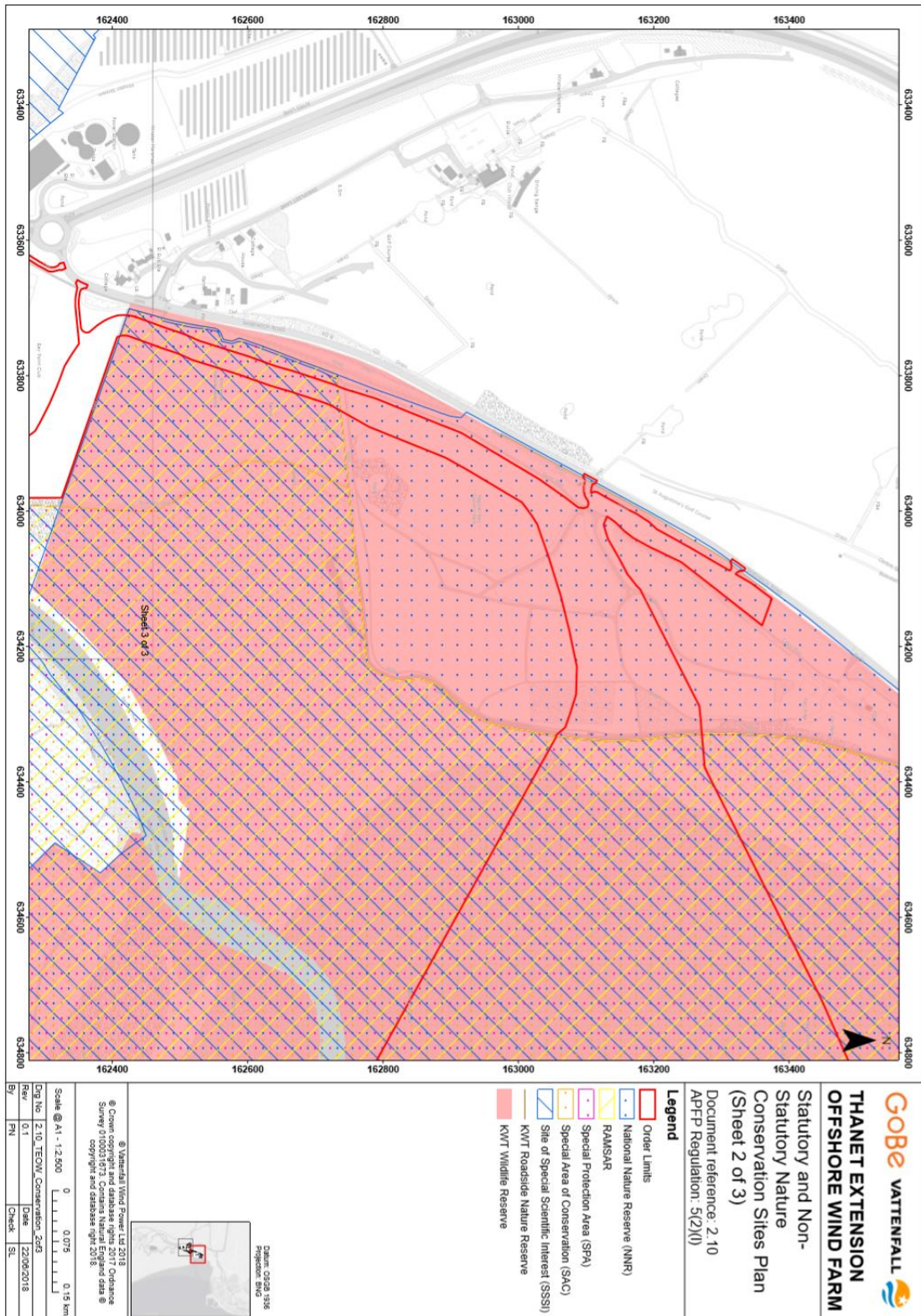
<sup>109</sup> National Policy Statement for Renewable Energy Infrastructure (EN-3). DECC, 2011

<sup>110</sup> 2.6.85-86 of NPS EN-3

<sup>111</sup> Paragraph 4.1.2 of [[APP-147](#)].

<sup>112</sup> 5.3.10 of NPS EN-1.

**Figure 5.3.3: Statutory and Non-Statutory Nature Conservation Sites in the Intertidal Zone**<sup>113 114</sup>



<sup>113</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>114</sup> Taken from Sheet 2 of 3 of [[APP-016](#)].

*adverse effect on an SSSI (either individually or in combination with other developments), development consent should not normally be granted*<sup>115</sup>. This is a position echoed at paragraph 3.1.5 of the MPS.

- 5.3.106. NPS EN-1 states<sup>116</sup> that sites of regional and local biodiversity and geological interest, such as the KWT Reserve, 'have a fundamental role to play in meeting overall national biodiversity targets; contributing to the quality of life and the well-being of the community; and in supporting research and education' and should be given due regard in development consent decisions.
- 5.3.107. The MSFD also contains high level descriptors of 'Good Environmental Status' relevant to intertidal ecology, including maintaining biological diversity, all elements of marine food webs and sea floor integrity to safeguard ecosystems.
- 5.3.108. Whilst the administrative jurisdiction of local authorities extends to the mean low water mark, no specific reference was made in the LIRs or Examination submissions by TDC, DDC or KCC to any adopted development plan policies affecting the intertidal zone at this location which should be treated as important and relevant in respect of this application.

### **The Applicant's Case**

- 5.3.109. The Applicant's consideration of the potential effects on intertidal habitats and ecology is set out principally at [\[APP-046\]](#), [\[APP-081\]](#), [\[APP-100\]](#), [\[APP-061\]](#), and [\[APP-049\]](#). The assessments conclude that under the worst-case scenario, the effects on the saltmarsh would not be greater than minor adverse, representing 'Not Significant' effects in EIA terms.
- 5.3.110. As documented in Section 2.2 of this Report, the submitted application contained three options for the cable landfall within Pegwell Bay [\[APP-057\]](#), one of which (known as 'Landfall Option 2') would have resulted in the permanent loss of intertidal saltmarsh habitat [\[APP-046\]](#). At D1, and in response to concerns raised by IPs, the Applicant sought to remove Landfall Option 2 from the project description and the Examination proceeded on the basis of alternative cable landfall Options 1 and 3 [\[REP1-001; REP1-014\]](#). As set out in detail in section 1.5 of [\[APP-057\]](#), Option 1 would use HDD to pass under the intertidal area while Option 3 would involve open trenching through the existing sea wall.
- 5.3.111. The Applicant submitted a Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP), describing the actions needed to minimise the effects of construction of the Proposed Development on the saltmarsh. The submitted document was revised during Examination following submissions from IPs and the final version (Revision C) is provided at [\[REP4-020\]](#). The SMRMP forms a certified document in Schedule 13 of the Applicant's final draft DCO [\[REP8-013\]](#) and its monitoring provisions are

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<sup>115</sup> 5.3.11 of NPS EN-1.

<sup>116</sup> 5.3.13 of NPS EN-1.

secured in Requirement 13 and Conditions 15(2)(c) and 17(2)(c) of the DML (Schedule 12).

### **Planning Issues**

- 5.3.112. A primary theme during Examination related to the potential for direct disturbance to the sensitive saltmarsh habitat as a result of export cable installation and maintenance in the intertidal zone.
- 5.3.113. NE's initial concerns about permanent effects on the saltmarsh [RR-053] fell away following the removal of Landfall Option 2 from the project description. In [REP6-019] NE agreed that the effect of the temporary disturbance of the saltmarsh habitat under Options 1 and 3 had been appropriately assessed by the Applicant as minor adverse. NE stated: *'the saltmarsh monitoring and mitigation plan when agreed will provide the mechanisms to ensure that temporary impact is limited and that the recovery of the saltmarsh is achieved. There are mechanisms to ensure sufficient pre and post construction monitoring is undertaken to monitor this recovery and if recovery is not as planned intervention to improve recovery can be implemented'*<sup>117</sup>.
- 5.3.114. NE agreed [REP5-066] the content of the revised SMRMP [REP4-020] during Examination, but NE contended [REP6-095] that the plan should be included in the list of pre-construction plans and documentation at Condition 12 of the DML (Schedule 12) for approval by MMO (in consultation with its advisers) prior to construction. This, NE argued, would ensure that the monitoring and mitigation currently outlined in the SMRMP is still appropriate at the time of any works being carried out. NE pointed to precedent in other marine licence conditions such as for Race Bank, Lincs and Thanet OWFs and a parallel requirement on the Nemo cable project.
- 5.3.115. The Applicant responded [REP8-006]: *'Whilst the Applicant recognises the precedents from other projects, there is no loss of security of control regarding the subsequent agreement of survey layout etc given the need to comply with these commitments in the SMRMP which is a certified document'*. NE sustained its concern and this issue remained unresolved at the close of Examination.
- 5.3.116. Another core theme of this topic was the question of seasonal restrictions for activity in the intertidal zone that had the potential to disturb non-breeding waterbirds. KWT expressed concern [REP3-081], based on local experience of cable installation for the Nemo connector and TOWF projects within Pegwell Bay, that the seasonal restriction identified by the Applicant as embedded mitigation for effects on intertidal habitats was not adequately secured. The ExA explored this issue at ISH8 [EV-050] and found support from NE for specific provisions being included on the face of the DCO in light of the reliance on the seasonal restriction for

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<sup>117</sup> Page 19 of [REP6-019].

conclusions of No AEOI on the Thanet Coast and Sandwich Bay SPA [REP5-066].

- 5.3.117. The Applicant subsequently amended the DCO to include Requirement 26 and DML Condition 18 in its final draft DML (Schedule 12) [REP8-013]. These provisions stipulate that no construction works, percussive piling activity or planned operation works within Work Nos. 3A and 3B (within the intertidal area) can take place between 1 October and 31 March (inclusive) of any year. Under Condition 11(1)(c)(ii) of the DML (Schedule 12), the proposed timings for installation works approved by the MMO under the construction programme and monitoring plan must also have due regard to the seasonal restriction.
- 5.3.118. Following discussion at ISH8 [EV-050] about the overlapping jurisdictions of relevant authorities in the intertidal zone, specifically in this case the MMO and local authorities, the Applicant accepted [REP5-015] that it would be appropriate to secure the restriction via both DCO Requirement and DML Condition. In recognition of the potential for practical difficulties where there is more than one discharging authority, and the need to ensure enforceability, Requirement 10 of the Applicant's final draft DCO [REP8-013] was added to explicitly allow approval of any plan or protocol relating to works in the intertidal area to be approved by more than one statutory body and to require consultation between discharging authorities in the event that more than one approval is required. This approach was generally welcomed by NE [REP5-066].
- 5.3.119. In addition to this restriction, the final submitted Schedule of Mitigation [REP7-017] included at mitigation reference 5.9 a commitment that *'Any works within 250 m of intertidal habitats that are not covered by seasonal restrictions but are in direct line of sight from intertidal habitats, e.g. works on the TJBs, would only take place during October - March following the erection of screening fencing to avoid visual disturbance to nonbreeding waterbirds using intertidal habitats. The details of proposed screening will be provided in the detailed LEMP and will be subject to agreement with Natural England'*.
- 5.3.120. NE submitted at D6 that this mitigation measure, which is required to support the conclusion of no AEOI for the Thanet Coast and Sandwich Bay SPA, should be included on the face of the DCO. The Applicant's response [REP8-006] was that, *'this mitigation is adequately secured by requirement 25, which requires the implementation of a landscape and ecological mitigation plan, which must accord with the outline landscape and ecological mitigation plan. Not only does this plan secure the mitigation but, because of the more nuanced application of a timing restriction within Pegwell Bay Country Park (as opposed to the blanket restriction in the intertidal), it allows for discussion and agreement on matters such as which works are in direct line of sight, and the nature of screening fencing, to ensure that Natural England's concerns are addressed. This plan as such secures the mitigation referred to by Natural England.'*

- 5.3.121. At D7 [REP7-040], NE stated: *'The Applicant has provided further clarification regarding this point at D6A following the ExA's request for further information. Natural England recognises the Applicant's statement that the commitment of the seasonal restrictions is secured within the Schedule of Mitigation and OLEMP'*. NE did not pursue this matter any further and the DCO was not amended in this respect.
- 5.3.122. The final SoCG between KWT and the Applicant [REP6-010] recorded agreement on the SMRMP, with some reservations about how it is secured in the DCO/DML. KWT noted in section 6 of that document that it *'still has reservations about the cumulative disturbance to the site caused by several large-scale developments, and believe that this could have adverse impacts on the integrity of the site and the features, habitats and species'*. In [REP3-081], KWT submitted that this includes concerns about the pressure from *'the hoverpad; road widening; local housing / increased recreational pressure; repeated cable laying works; Coast Path; cycle track; and Manston Airport'*. No further evidence to support this position was provided beyond that previously submitted at [REP1-102]. The final SoCG between the MMO and the Applicant [REP5-049] recorded agreement on all matters pertaining to benthic intertidal ecology.
- 5.3.123. The LIRs did not raise any specific matters in relation to the Applicant's assessment of the ecological effects in the intertidal zone [REP1-091]; [REP1-098]; [REP1-128].

### **ExA Response**

- 5.3.124. The ExA examined intertidal ecology matters through written questions [PD-012; PD-020] and orally at ISH3 [EV-026]; [EV-027]; [EV-028] and ISH8 [EV-050]. The ExA has considered all of the submitted evidence in relation to effects on intertidal ecology and habitats. The ExA notes the general level of agreement on the content of the revised SMRMP [REP4-020] and agrees that it provides a sound basis for mitigation and monitoring the effects of the Proposed Development on the sensitive saltmarsh habitat in this location.
- 5.3.125. The ExA has carefully considered the submissions on both sides on the question of whether or not the SMRMP should be included in the list of pre-construction plans and documentation at Condition 12 of the DML (Schedule 12) for approval by MMO (in consultation with its advisers) prior to construction. Whilst accepting that as a certified document the SMRMP must be adhered to in any event, the ExA finds the case of NE [REP6-095], that the change would ensure that the content of the plan is still appropriate at the time of any works being carried out and that precedent exists in a number of existing and comparable marine licences, to be a compelling one.
- 5.3.126. A considerable period of time could foreseeably elapse between the revised SMRMP being agreed (March 2019) and construction of Work Nos. 3A and 3B, during which time experience and scientific knowledge continues to evolve. Consequently, it is the ExA's view that the DML at

Schedule 12 should be amended to include the SMRMP in the list of pre-construction plans and documentation to be approved.

- 5.3.127. The ExA notes the agreement achieved during Examination that the Schedule of Mitigation and OLEMP together provide satisfactory security for the seasonal restriction relating to any works within 250 m of intertidal habitats that are in its direct line of sight, and that it is not necessary to also include the restriction on the face of the DCO. The ExA agrees with this rationale and notes that the matter is subject to a subsequent approval by the relevant planning authority in consultation with NE under the Requirement for a Landscape and Ecological Mitigation Plan. As such, no change to the DCO is recommended in this regard.
- 5.3.128. The ExA is mindful of the un-withdrawn reservations of KWT [[REP6-010](#)] about the potential for cumulative disturbance to the saltmarsh as a result of a number of large-scale developments in the area, as set out in its oral submissions at ISH3 [[EV-026](#); [EV-027](#); [EV-028](#)] and in [[REP3-081](#)]. Whilst the scale of recent and planned development in the vicinity of the affected saltmarsh is noted, the ExA has not been provided with substantive evidence to contradict the Applicant's position on cumulative effects, which is agreed with NE [[REP6-019](#)], and as a result, the ExA does not find a justified reason to disregard it.
- 5.3.129. In examining the effects on intertidal ecology, the ExA has had particular regard to the sensitive conservation status of the saltmarsh in this case and the policy<sup>118</sup> set out in NPS EN-3 in relation to intertidal habitats. Taking into account the matters set out above, and subject to the recommended change to the DCO to add the SMRMP to the list of pre-construction plans, the ExA is satisfied that the cable installation and decommissioning has been designed sensitively taking into account intertidal habitat. There would be no permanent loss of saltmarsh habitat as a result of the Proposed Development and the evidence, which is generally agreed with the Statutory Nature Conservation Body (SNCB), is that appropriate measures are secured via the DCO, DML and SMRMP to ensure that the reinstatement of any disturbed areas of saltmarsh would occur within a reasonable timeframe following any temporary construction effects. The ExA therefore finds that the NPS EN-3 policy test is met.
- 5.3.130. The ExA is also mindful that the saltmarsh is a feature of the Sandwich Bay to Hacklinge Marshes SSSI and forms part of the Sandwich and Pegwell Bay National Nature Reserve and in accordance with paragraph 5.3.10 of NPS EN-1 should be given a high degree of protection. In light of its conclusions above, it is the ExA's considered view that the Proposed Development is not likely to have an adverse effect on the SSSI or NNR, either individually or in-combination with other developments. Consequently, the test contained in paragraph 5.3.11 of NPS EN-1 and at paragraph 3.1.5 of the MPS is met and there is no impediment to consent being granted from this perspective.

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<sup>118</sup> Paragraphs 2.6.85-86 of NPS EN-3.

5.3.131. In coming to this view, the ExA has also had regard to the status of the KWT Reserve as a site of regional biodiversity interest and considers that its fundamental role, as recognised within paragraph 5.3.13 of NPS EN-1, would not be adversely affected.

### **Conclusion on Intertidal Habitats and Ecology**

5.3.132. Taking all relevant evidence and policies into account, the ExA draws the following conclusions:

- a change to the DCO is required to include the SMRMP in the list of pre-construction plans and documentation to be approved under the export cable system DML, in order to provide adequate security for the mitigation measures contained therein;
- having regard to the DCO change outlined above, any adverse impacts of the Proposed Development on intertidal habitats are effectively mitigated and that mitigation is appropriately secured;
- accordingly, the relevant legislative and policy tests, most notably as set out at paragraphs 2.6.78 to 2.6.89 of NPS EN-3 and paragraphs 5.3.10 to 5.3.13 of NPS EN-1 are met; and
- on balance, the topic is a neutral consideration in the overall planning balance.

## **Fish and Shellfish Ecology**

### **Introduction**

5.3.133. This sub-section deals with the effects of the Proposed Development on fish and shellfish ecology. The ExA's Examination in respect of fish and shellfish ecology matters was generally explored as part of biodiversity topics and separate from commercial fisheries matters which are considered at Section 6.2 of this Report.

### **Policy Considerations**

5.3.134. NPS EN-3 notes<sup>119</sup> that there is the potential for offshore wind farms to affect fish communities, migration routes, spawning activities and nursery areas through interaction with seabed sediments and noise impacts during construction, decommissioning and to a lesser extent during operation. At paragraph 2.6.68, NPS EN-3 states that the decision maker *'should consider the effects of a proposal on marine ecology and biodiversity taking into account all relevant information made available to it'*. It goes on to state at that, *'Mitigation may be possible in the form of careful design of the development itself and the construction techniques employed'*<sup>120</sup>.

5.3.135. The MPS acknowledges at paragraph 3.3.24 that renewable energy developments can potentially have adverse impacts on marine fish, primarily through construction noise. No marine plan for the area comprising the application site is in place at the time of writing.

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<sup>119</sup> Paragraphs 2.6.72-2.6.77 of NPS EN-3.

<sup>120</sup> Paragraph 2.6.70 of NPS EN-3.



5.3.136. Due to the offshore nature of this issue, there was no position recorded in any of the submitted LIRs [[REP1-091](#), [REP1-098](#), [REP1-128](#)].

### **The Applicant's Case**

5.3.137. The Applicant's consideration of the potential effects on fish and shellfish ecology is set out at [[APP-047](#)]. Table 6.16 of that chapter sets out a summary of predicted impacts at the various stages of the project life cycle. The Applicant's assessment concludes<sup>121</sup>: *'Even adopting the conservative assessment approach described above, it has been found that for all of the fish and shellfish ecology receptors included in this assessment, the level of effect significance is Minor or Negligible. The potential effects to fish and shellfish ecology receptors are therefore Not Significant in terms of the EIA Regulations'*.

5.3.138. In response to matters raised by the MMO during Examination about the potential construction noise effects on herring and sole spawning grounds, the Applicant stated that its approach to noise modelling and assessment was agreed through the Evidence Plan process [[APP-137](#)] and therefore expressed a degree of surprise at the submissions from the MMO on this matter [[REP4C-009](#)]. Nonetheless, the Applicant submitted a series of additional documents intended to supplement or clarify its case, most notably:

- at D4C, a 'Fish Clarification Note' [[REP4C-009](#)] and supporting annex [[REP4C-010](#)] responding to points raised by the MMO;
- at D6A, a response to R17Qs on the matter [[REP6A-002](#)]; and
- at D8, a response to D7 submissions on fish ecology [[REP8-012](#)] and a final position statement [[REP8-003](#)].

5.3.139. The Applicant's firm position was that its ES conclusions were robust and no additional mitigation was required beyond those measures already identified in the Schedule of Mitigation [[REP7-017](#)].

### **Planning Issues**

5.3.140. The SoCG between the Applicant and NE [[REP6-016](#)] reflected agreement on all areas of fish and shellfish ecology, but with the caveat that: *'we agree with this position in relation to fish species protected by designated sites, however we encourage further consultation with other statutory bodies such as CEFAS [sic] and the MMO'*.

5.3.141. Whilst there was general agreement amongst relevant IPs in relation to the effects on shellfish ecology and that of most fish species, the question of construction noise effects on herring and sole spawning grounds was strongly contended by the MMO. The final submitted SoCG between the two parties [[REP6-011](#)] recorded outstanding disagreement about the potential magnitude of impact on herring and sole spawning grounds and whether appropriate mitigation measures were in place.

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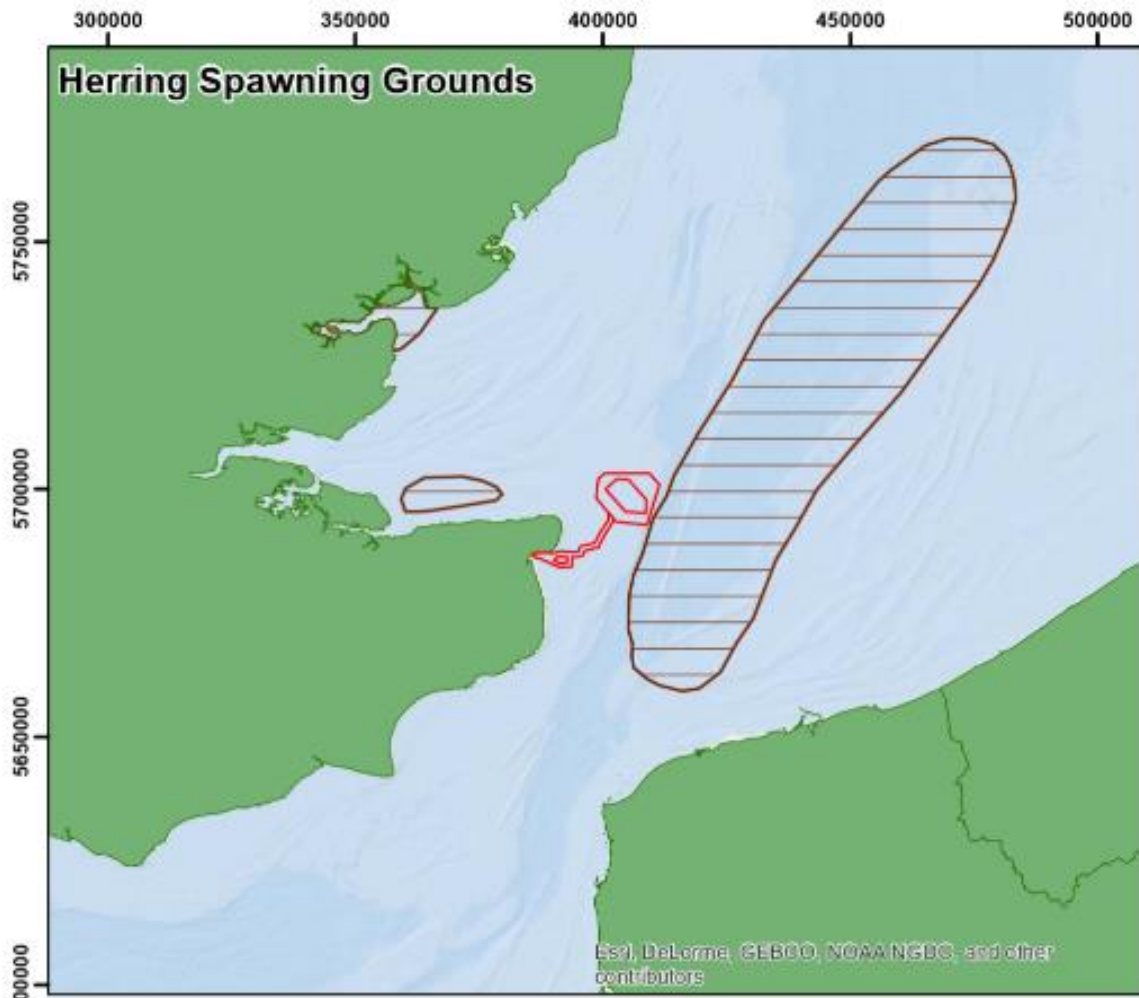
<sup>121</sup> Paragraph 6.17.4 of [[APP-047](#)].

5.3.142. The ExA probed the matter through successive rounds of written questions including ExQ 1.1.28 [PD-012]; ExQ2.1.8 [PD-016]; ExQ3.1.5 [PD-019]; and R17Q4.1.1 and 4.1.2 [PD-020]. Despite a number of exchanges in the final stages of Examination, no agreement between the two parties was reached. The Examination closed with no resolution to this matter. The final position of the MMO is set out in [REP6-088], [REP7-035] and [AS-023], whilst the Applicant's closing position is set out at section 6 of [REP8-003] and [REP8-012], which refers to evidence submitted at earlier deadlines.

#### Effects on Herring Spawning

5.3.143. In respect of herring, the MMO's submissions related to two spawning grounds in the vicinity of the application site, one at Herne Bay for the Thames/Blackwater Herring sub-stock (shown to the west of the application site in Figure 5.3.4 below) and one in the Eastern Channel and Southern Bight for the Downs sub-stock (shown to the east of the application site in Figure 5.3.4 below).

**Figure 5.3.4: Herring Spawning Grounds Relative to the Application Site<sup>122</sup>**



<sup>122</sup> Extract from Figure 6.3: 'Spawning and Nursery Grounds for Herring and Cod' of [APP-047].

- 5.3.144. The MMO's concerns [REP6-088] centred around the Applicant's approach to modelling herring responses to piling noise and in particular the evidence presented by the Applicant to support its position that modelling for a fleeing (as opposed to stationary) receptor was sufficiently precautionary. In response to a request by the MMO, the Applicant provided additional modelling at [REP4C-009] and [REP4C-010]. The MMO highlighted that this modelling *'shows that the predicted impact ranges for mortality, recoverable injury and Temporary Threshold Shift (TTS) (207dB, 210 dB and 186 dB SELcum) will overlap with areas of higher importance for herring spawning (East Channel (Downs) stock)'*<sup>123</sup> and further, *'indicated that in the case of a stationary herring receptor under the maximum worst case scenario, 1.768% of the total spawning potential could be affected by the Proposed Development'*<sup>124</sup>.
- 5.3.145. In addition to this, the MMO did not consider that the Applicant's methodology for calculating spawning potential, which effectively multiplied spawning periods by spawning area<sup>125</sup>, was a reliable approach because of high variability in the spatial distribution of spawning grounds, and in the precise timing of spawning, from year to year [REP6-088]. Moreover, the MMO was not satisfied that the Applicant's assessment took sufficient account of the potential behavioural effects on fish as a result of piling noise which, the MMO stated, *'can have a significant impact to a population if noise causes fish to move away from foraging or breeding grounds or to cease reproductive activities'* (paragraph 2.2.3 of [REP7-035]).
- 5.3.146. This combination of concerns led the MMO to conclude that it did not have sufficient evidence to agree with the Applicant's assessment of effects on herring spawning. The MMO argued<sup>126</sup> that it: *'requires sight of either the modelled SPLpeak<sup>127</sup> or SELs<sup>128</sup> noise isopleths overlaid onto herring spawning grounds/appropriate IHLS<sup>129</sup> data for the two modelled locations, in order to make an informed judgement on the potential risk of behavioural effects on spawning herring. Based on the evidence submitted by the Applicant to date, it is currently difficult to ascertain what the predicted noise levels will be at the spawning grounds. In the circumstances, the MMO must adopt a precautionary approach and maintain that the proposed restrictions are fully justified'* [REP7-035].
- 5.3.147. The Applicant set out a point by point response to each of the MMO's comments on herring spawning effects in Table 1 of [REP8-012]. It is clear from this material that some distance remains between the two

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<sup>123</sup> Paragraph 1.2.4 of [REP6-088].

<sup>124</sup> Table 1 of [REP4C-009].

<sup>125</sup> See Section 1 of [REP4C-009].

<sup>126</sup> Paragraph 2.2.11 of [REP7-035].

<sup>127</sup> Peak Sound Pressure Level.

<sup>128</sup> Single peak Sound Exposure Level.

<sup>129</sup> International Herring Larvae Survey.

parties on the basis for assessing the potential effects on the spawning grounds of both herring sub-stocks.

- 5.3.148. For the Thames herring stock, the Applicant sought to demonstrate that the Margate Sands sandbank, which is located between the proposed array area and the spawning ground, presents a significant topographical barrier on the seabed which would attenuate noise and reduce the effect [REP4C-009]. The Applicant's evidence culminated in the following conclusion: *'The Applicant's evidenced view is that there is a complete absence of effect-receptor pathway for the Thames spawning stock'*<sup>130</sup>. The Applicant summarised its closing position [REP8-003] as: *'There is no interaction with spawning grounds under any noise propagation scenario. The Margate sands complex serves to attenuate all noise'*<sup>131</sup>.
- 5.3.149. For the Downs herring stock, the Applicant's evidence concluded that, 'There is limited interaction with historic spawning ground (0.07% overlap with spawning potential for eggs/larvae; 0.049% overlap with spawning potential for nonfleeing 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'<sup>132</sup>.
- 5.3.150. Since these final conclusions were set out at the final deadline of the Examination, it was not possible to seek the MMO's response, although a submission [AS-023] made on the same day by the MMO indicated that its position remained unchanged from that set out at D6 and D7.

#### Effects on Sole Spawning

- 5.3.151. Many of the same concerns as for herring were raised by the MMO in respect of effects on the Dover sole stock. This included the need for noise modelling (based on a stationary receptor) to be overlain onto identified sole spawning grounds data [REP7-035]. The Applicant provided additional information at [REP4C-007] and [REP4C-010].
- 5.3.152. However, the MMO's final position<sup>133</sup> was: 'Based on the current evidence using best judgement and existing knowledge of the extent of high intensity sole spawning grounds within the Thames Estuary, the MMO is inclined to believe that as noise propagation is travelling away from the estuary, a piling restriction may not be necessary for sole. However, the MMO position is that this should be verified through presentation of the appropriate East and South-West noise contour maps with sole spawning grounds data overlaid... This will provide, the most suitable depiction of the potential impacts of noise in support of concerns raised by the MMO as well as that of other consultees and stakeholders who have a vested interest. In absence of further modelling to fully assess the possible

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<sup>130</sup> Page 21 of [REP8-012].

<sup>131</sup> Paragraph 107 of [REP8-003].

<sup>132</sup> Paragraph 108 of [REP8-003].

<sup>133</sup> Paragraphs 2.2.38-2.2.39 of [REP7-035].

impacts, the MMO has to adopt a precautionary approach and recommend that a seasonal restriction for sole is imposed at this time' [REP7-035].

- 5.3.153. As with herring, the Applicant provided a point by point response to each of the MMO's comments on sole spawning effects in Table 1 of [REP8-012]. This included resubmitting a plan originally submitted as Figure 2 at [REP4C-009] showing remodelled noise contours with herring spawning which sought to address the MMO's concern but notably did not provide the specific information requested by the MMO in relation to sole spawning grounds.
- 5.3.154. The Applicant concluded [REP8-003]: *'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'*<sup>134</sup>.
- 5.3.155. Although the ExA notes that this conclusion appears to vary subtly from the statement at [REP8-012] that: *'The conclusion, assuming the maximum design scenario for all 36 piling locations (highly precautionary and practically unrealistic) for a non-fleeing receptor, is an impact of 0.786% of spawning potential. The Applicant considers this to be negligible and would note that there are no recent or historic precedents within the region'*<sup>135</sup>. In any event, the Applicant's clear position was that even on the basis of highly precautionary assumptions, the potential effect on sole spawning grounds was negligible.
- 5.3.156. As was the case for herring, it was not possible to seek the MMO's response to the Applicant's final conclusions due to their submission at the final deadline, although the MMO's submission [AS-023] of the same date indicated that its position remained unchanged from that set out at D6 and D7.

#### Mitigation for Potential Herring and Sole Effects

- 5.3.157. Suggested wording for the seasonal restrictions recommended by the MMO to be secured by DML condition in respect of potential effects on herring and sole was provided at paragraphs 3.10.3 to 3.10.6 of [REP7-035]. The restrictions can be summarised as prohibiting pile driving works as follows:
- between 1 November and 31 January for Downs (North Sea) herring stock;

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<sup>134</sup> Paragraph 109 of [REP8-003].

<sup>135</sup> Page 19 of [REP8-012].

- between 1 February and 30 April for Thames herring stock; and
- between 1 March and 30 April for Dover sole stock.

- 5.3.158. The MMO specified<sup>136</sup> additional information that it required from the Applicant and stated [REP7-035]: *'In the event TEOWF is given consent and seasonal restrictions are secured on the DMLs, provision of the above evidence will enable the MMO to fully assess potential effects and advise if and under what circumstances such restrictions could be revised'*<sup>137</sup>.
- 5.3.159. The MMO added that its advice was supported by KEIFCA and the NFFO, and that the TFA supported a piling restriction for at least November – January in respect of herring spawning (paras 1.2.43-1.2.45 of [REP6-088]).
- 5.3.160. Following the logic of its argument on potential effects, the Applicant's final position [REP8-012] in respect of any seasonal restrictions was that *'Any such mitigation measure would be disproportionate when considered against the scale of effect and is not supported scientifically or in policy'*<sup>138</sup>.
- 5.3.161. Furthermore, the Applicant questioned [REP8-012] the consistency of the MMO's advice on the Proposed Development with the approach taken for the TOWF marine licence, in which a seasonal restriction was imposed solely in respect of the Thames herring spawning stock (for the period February to April) and not in mitigation for any effects on the Downs herring stock or sole spawning stock. Moreover, it emerged in the late stages of Examination that the marine licence condition containing the seasonal restriction for herring originally imposed on TOWF was subsequently removed in 2008 through the provision of further information [REP7-035]. The MMO provided (at paragraph 2.2.27 of [REP7-035]) the criteria under which removal of the TOWF marine licence condition was agreed.
- 5.3.162. The Applicant argued that the circumstances resulting in the removal of that condition were so comparable to those in respect of the Proposed Development as to indicate against requiring imposition of the restriction in this case. In response to ExQ4.1, the Applicant set out [REP6A-002] what it considered to be the primary factors of relevance to the removal of the restriction and argued that all can be applied directly to the Proposed Development, contending that *'The parallels between the TOWF case and the Thanet Extension project are such that the ExA can apply weight to this position with confidence'*<sup>139</sup>.

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<sup>136</sup> Paragraph 3.10.7 of [REP7-035].

<sup>137</sup> paragraph 3.10.8 of [REP7-035].

<sup>138</sup> Page 21 of [REP8-012].

<sup>139</sup> Pages 22 and 23 of [REP8-012].

- 5.3.163. The MMO set out at paragraphs 2.2.28 to 2.2.32 of [[REP7-035](#)] some particular differences between the data presented for the two projects which it argued justified the difference in advice. This highlighted that:
- specific survey data (such as two seasons of trawl surveys) and noise modelling (relating to the attenuating effects of Margate Sands) undertaken for TOWF that was not presented or appropriately updated for the Proposed Development;
  - the advice on the TOWF licence condition was specific to that project and in the region of 10 years old so did not reflect latest practice on EIA; and
  - the Proposed Development would extend the overall footprint of the array area in all directions and therefore could logically be expected to result in noise propagation over a wider area.
- 5.3.164. The ExA explored alternative mitigation possibilities in the form of bubble curtains or other 'at source' techniques but the Applicant did not deem there to be justifiable reason for their employment in this case and in any event questioned their effectiveness in the particular water depth and current speed conditions of the application site [[REP6A-002](#)]. Consequently, the MMO found it was *'unable to assess the extent of impact and provide information on the circumstances of deployment, methodology and effectiveness (of at source mitigation measures) on TOWF without further evidence from the Applicant'* (para 2.3.2 of [[REP7-035](#)]).
- 5.3.165. In respect of the Downs herring stock only, the Applicant's final submissions indicated that, with a view to avoiding impacts across multiple peak spawning periods, it:
- 'would be willing to accept wording within the DCO requiring piling to be complete within one year and not to extend beyond a single winter. This wording could be added to the current construction monitoring programme condition of each DML (Condition 13 and 11 of the generation and export cable DML respectively) to alter part (b)(iv) to read:*
- (b) A construction programme and monitoring plan to include details of—*
- (iv) an indicative written construction programme for all wind turbine generators, offshore substation, meteorological mast (restricting piling works to not extend beyond a single winter), buoys and cables comprised in the works at paragraph 1 of Part 3 (licenced activities) of this Schedule (insofar as not shown in paragraph (ii) above)<sup>140</sup>*
- 5.3.166. Since this concession was made for the first time at the final deadline in the Examination, there was no opportunity for the views of the MMO or other IPs on this suggestion to be put before the ExA.

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<sup>140</sup> Page 23 of [[REP8-012](#)].

## ExA Response

- 5.3.167. The ExA considers that, with the exception of the matter of construction noise effects on herring and sole, the effects of the Proposed Development on fish and shellfish ecology has been adequately assessed and appropriately mitigated.
- 5.3.168. On the question of noise effects on herring and sole spawning grounds, the ExA has given careful consideration to the detailed and extensive submissions on both sides of the argument. Having reviewed all of the evidence, the ExA is not satisfied that the Applicant has comprehensively addressed all of the stated concerns of the MMO. The MMO is a statutory advisor in respect of fish ecology and is itself advised by a range of bodies with scientific and practical expertise in the field. It has been actively engaged in the Examination and appears to the ExA to have made reasonable efforts to work toward agreement with the Applicant in the time available. Its position on this matter is supported by its advisors including Cefas (the Centre for Environment, Fisheries and Aquaculture Science) and fishing industry representative bodies. The ExA therefore considers the MMO's submissions on this topic to be important and relevant matters attracting significant weight in its decision.
- 5.3.169. The ExA notes the Applicant's concerns about the perceived change in advice from the MMO in relation to the assessment of noise effects between the pre-application and Examination stages. The Applicant submits [[REP8-003](#)] that matters relating to the characterisation of the receiving environment and the approach to assessing underwater noise impacts were agreed under the EIA Evidence Plan process during the pre-application stage ([\[APP-137\]](#); [\[APP-138\]](#)) and that the MMO subsequently changed its position (particularly in respect of assumptions around 'fleeing') during Examination. The ExA acknowledges this and notes that no specific change in scientific evidence has been cited by the MMO as the basis for this. However, the MMO's rationale [[REP6-088](#)] is that the change in position was a result of evolving practice and experience on a number of recent OWF assessments. Whilst frustrating for the Applicant having participated in the Evidence Plan process, the ExA considers that the MMO as statutory advisor is within its rights to update its position in response to emerging practice across the range of marine licences for which it has responsibility.
- 5.3.170. The ExA notes the Applicant's stated endeavours to arrange a meeting with Cefas to discuss the contended matters which it appears was not forthcoming despite repeated requests. Since Cefas did not participate in this Examination in its own right, but instead provided advice through the MMO, the ExA and all IPs relied on the MMO to convey its views. Whilst noting that this is common practice on OWF Examinations, the ExA observes that a degree of tension has arisen in this case where Cefas appear to have been at the heart of scientific advice on the contended topic but not an IP in the Examination.
- 5.3.171. Notwithstanding this, in the light of the level of dissatisfaction from MMO about the sufficiency of the submitted evidence, the ExA is left in some



considerable doubt as to the robustness of the Applicant’s conclusions on the effects on herring (Thames and Downs stocks) and sole spawning grounds. As a consequence, the ExA does not believe it has been provided with sufficient evidence to enable it to agree with the Applicant’s conclusions about the effects of the Proposed Development on fish ecology, and specifically spawning activities, in accordance with paragraphs 2.6.68 and 2.6.72-2.6.77 of NPS EN-3 and the MPS.

5.3.172. In these circumstances, it is the ExA’s view that a precautionary approach should be taken, and seasonal restrictions should be imposed by DML Condition as mitigation for potential impacts on the Thames and Downs herring sub-stocks and sole spawning grounds.

5.3.173. The ExA has considered the wording of the conditions recommended by the MMO at paragraphs 3.10.3 to 3.10.6 of [REP7-035]. Taken together, the restrictions would cover the period shown graphically in Figure 5.3.5 below and would have the effect of prohibiting all pile driving works between 1 November and 30 April each year.

**Figure 5.3.5: Recommended Extent of Seasonal Restrictions for Spawning Periods of Downs Herring, Thames Herring and Dover Sole<sup>141</sup>**

	J	F	M	A	M	J	J	A	S	O	N	D
Downs												
Thames												
Sole				*								

\*Peak

5.3.174. The ExA acknowledges that such restrictions should not be imposed lightly and recognises the potential for significant financial and programming implications for the project as a whole. In this vein, the ExA has had careful regard to the Applicant’s submissions in response to R17Q4.1.2(a)-(c) [REP6A-002] that imposing the restrictions could have the following potential implications:

- increased risks to programme and consequently commercial confidence in the construction phase of the project;
- higher overall financial costs for the offshore construction, for example relating to delayed starts, multiple installation vessel mobilisations and prolonged storage costs;
- decreased flexibility in the construction programme and reduced prospect of achieving an earlier commissioning date; and
- risk of overrun of foundation and export cable installation into the period subject to the agreed seasonal restriction in the intertidal zone (October to May) due to the sequential programming of works.

5.3.175. Notwithstanding this, the ExA observes that the maximum piling duration presented within the ES [APP-042] is for a construction period of six months, which includes an assumption of one month for downtime, and

<sup>141</sup> Taken from Table 1 of the MMO’s [REP7-035].

that the Applicant accepts that it would remain possible to plan delivery within the originally assessed Rochdale Envelope of the project, albeit with less flexibility [[REP6A-002](#)].

- 5.3.176. As a result, the ExA's considered view is that all of the seasonal restrictions, with wording as recommended by the MMO, are necessary and proportionate. For clarity, the proposed wording for inclusion as conditions within both DMLs (generating and transmission assets) is set out below.

***For Downs herring stock:***

"No pile driving works shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 1st November and 31st January each year unless the MMO provides written confirmation to the undertaker beforehand that such works can take place, in all or in a specified part of the site, during this period or a part of this period."

***For Thames herring stock:***

*"No pile driving works shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 1st February and 30th April each year unless the MMO provides written confirmation to the undertaker beforehand that such works can take place, in all or in a specified part of the site, during this period or a part of this period."*

***For Dover sole stock:***

"No pile driving works shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 1st March and 30th April each year unless the MMO provides written confirmation to the undertaker beforehand that such works can take place, in all or in a specified part of the site, during this period or a part of this period."

- 5.3.177. In arriving at this view, the ExA has noted that the drafting for the DML conditions retains the possibility that through the submission of satisfactory additional evidence, the MMO would have the power to effectively lift one or more of the restrictions through the DML variation process. The MMO has also noted that, *'Should piling restrictions be conditioned on the marine licence as per the MMO's recommendations, the MMO is willing to consider changes to any conditions through a variation mechanism in light of new supporting evidence'*<sup>142</sup>. Since the MMO has set out what additional evidence it needs to see in order to be satisfied [[REP7-035](#)], the ExA considers there to be a reasonable prospect of the MMO being able to do this.

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<sup>142</sup> Paragraph 2.3.3 of [[REP7-035](#)]

5.3.178. The ExA has also had close regard to the Applicant's submissions about the consistency of the MMO's advice in relation to the Proposed Development and the earlier TOWF marine licence, both insofar as the spawning grounds identified (only Thames herring in the case of TOWF) and the comparability of the present scheme with the circumstances leading to the removal of the seasonal restriction for TOWF. Given the considerable time that has elapsed since grant of the marine licence for TOWF, the significantly greater footprint of the Proposed Development and the different survey data and modelling provided in the two cases<sup>143</sup>, the ExA is satisfied that the difference in approach is justified and reasonable.

### **Conclusion on Fish and Shellfish Ecology**

5.3.179. Taking all relevant documents and policies into account, the ExA concludes as follows:

- with the exception of the matter of construction noise effects on herring and sole, the ExA accepts the Applicant's conclusions as to the effects of the Proposed Development on fish and shellfish ecology and agrees that those effects have been appropriately mitigated;
- submissions from the MMO have cast considerable doubt on the robustness of the Applicant's conclusions on the construction noise effects on herring and sole spawning grounds;
- as a consequence, the ExA does not believe it has been provided with sufficient evidence to enable it to agree with the Applicant's conclusions about the impacts of the Proposed Development on fish ecology, and specifically spawning activities, in accordance with paragraphs 2.6.68 and 2.6.72-2.6.77 of NPS EN-3 and the MPS;
- in these circumstances, it is the ExA's view that a precautionary approach should be taken, and seasonal restrictions should be imposed by condition on both DMLs (generation and transmission assets) as mitigation for potential impacts on the spawning grounds of Thames and Downs herring sub-stocks and Dover sole;
- as such, a change to the DCO is required to incorporate the above DML Conditions, using drafting provided by the MMO;
- taking account of the DCO change outline above, the ExA considers that there is adequate security for all of the required mitigation and that the policy requirements of NPS EN-3 and the MPS are satisfied; and
- on balance, the ExA finds this topic to be a neutral consideration in the overall planning balance.

## **Protected Species**

### **Introduction**

**5.3.180.** This section considers the effects of the Proposed Development on protected species.

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<sup>143</sup> Paragraphs 2.2.28 to 2.2.32 of [[REP7-035](#)]

## Policy Considerations

- 5.3.181. The Habitats Regulations<sup>69</sup> and Offshore Marine Conservation Regulations<sup>70</sup> provide protection for 'European Protected Species' (EPS), for which licences by appropriate authorities must be granted for any actions otherwise resulting in an offence.
- 5.3.182. NPS EN-1 requires that individual wildlife species receiving statutory protection<sup>144</sup> or having been identified<sup>145</sup> as being of principal importance for the conservation of biodiversity are protected from the adverse effects of development. It states<sup>146</sup> that *'The IPC should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits (including need) of the development outweigh that harm. In this context the IPC should give substantial weight to any such harm to the detriment of biodiversity features of national or regional importance which it considers may result from a proposed development'*. Account should be taken<sup>147</sup> of mitigation measures agreed with NE or MMO and whether those bodies intend to grant or refuse relevant licences such as protected species mitigation licences.
- 5.3.183. NPS EN-3 states that in decision-making, appropriate weight should be attached to the conservation of protected species. It continues: *'The conservation status of marine European Protected Species and seals are of relevance to the IPC. The IPC should take into account the views of the relevant statutory advisors'*<sup>148</sup>.
- 5.3.184. The TDC LIR indicates that emerging Policy SP23 of the draft Thanet Local Plan 2019, which was in Examination stage at the close of this Examination, provides for the conservation of protected species.

## The Applicant's Case

- 5.3.185. The Applicant's position [[REP6-016](#)] is that the Proposed Development *'is highly unlikely to impact on legally protected species'*. It concludes [[APP-061](#)] that no European Protected Species (EPS) licence would be required for relevant species onshore. In [[APP-048](#)], the Applicant stated in respect of harbour porpoise that it *'will complete an EPS licence application post-consent, if appropriate, once there is more certainty on the project design envelope and updated assessment of impacts and mitigation requirements'*<sup>149</sup>. The application included [[APP-144](#)] a 'shadow EPS licence assessment' for harbour porpoise. Further protection is afforded to marine mammals as part of the Marine Mammal Mitigation Protocol (MMMP) [[APP-146](#)].

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<sup>144</sup> Under, for example, the Wildlife and Countryside Act 1981 or the Conservation of Habitats and Species Regulations 2010

<sup>145</sup> Under Section 41 of the Natural Environment and Rural Communities Act 2006

<sup>146</sup> Paragraph 5.3.17 of NPS EN-1

<sup>147</sup> Paragraph 5.3.20 of NPS EN-1

<sup>148</sup> Paragraph 2.6.95 of NPS EN-3

<sup>149</sup> Table 7.2 of [[APP-048](#)]

## **Planning Issues**

- 5.3.186. The final NE SoCG [[REP6-016](#)] indicates agreement with the Applicant's position on legally protected species. NE notes that the Applicant is under a duty to undertake pre-construction surveys to identify the presence of any such species and, where relevant, apply for the relevant licences at that time.
- 5.3.187. The final MMO SoCG [[REP6-011](#)] agrees that where piling works are proposed, an additional application for an EPS licence may be required to authorise activities that would allow for the potential disturbance of marine mammals.
- 5.3.188. There was nothing in any of the LIRs to suggest that the Applicant's position in terms of protected species was contested.

## **ExA Response**

- 5.3.189. Having considered the evidence, the ExA is satisfied that the Applicant has adequately assessed the potential impacts on protected species. The ExA notes that there is the potential for the need for future licence applications should pre-construction surveys indicate the presence of protected species. The submissions of NE and MMO give confidence that this eventuality is provided for within the framework of the DCO. An application for an EPS licence for harbour porpoise, if required, would be made post-DCO decision, a position acknowledged by the MMO and NE.
- 5.3.190. Consequently, the ExA's view is that the relevant legislative and policy tests, most notably those set out in the Regulations and NPS EN-1 and EN-3, have been met.

## **Conclusion on Protected Species**

- 5.3.191. Taking all relevant documents and policies into account, the ExA concludes as follows:
- the Applicant has adequately assessed the potential impacts on protected species; and
  - this is a position agreed with NE and MMO;
  - the relevant legislative and policy tests, most notably those set out in the Regulations and NPS EN-1 and EN-3, have been met; and
  - on balance, the topic is a neutral consideration in the planning balance.

## **Other Ecology Matters**

### **Introduction**

- 5.3.192. This section considers the effect of the Proposed Development on other ecology matters not already covered within this chapter, specifically:
- subtidal habitats and benthic ecology;
  - marine mammals; and
  - ornithology.

## Policy Considerations

5.3.193. Section 5.3 of NPS EN-1 sets out the policy in relation to generic biodiversity impacts. NPS EN-3 is clear<sup>150</sup> that core considerations for offshore infrastructure decision making include birds, marine mammals and subtidal seabed habitats. It states<sup>151</sup> that the decision maker should consider the effects of a proposal on marine ecology and biodiversity taking into account all relevant information made available to it.

5.3.194. In relation to subtidal habitats, NPS EN-3 makes the following statements<sup>152</sup>:

*'The conservation status of subtidal habitat is of relevance to the IPC.*

*The IPC should be satisfied that activities have been designed taking into account sensitive subtidal environmental aspects.*

*Where adverse effects are predicted, in coming to a judgement, the IPC should consider the extent to which the effects are temporary or reversible'.*

5.3.195. On marine mammal impacts, NPS EN-3 states<sup>153</sup> that

*'The IPC should be satisfied that the preferred methods of construction, in particular the construction method needed for the proposed foundations and the preferred foundation type, where known at the time of application, are designed so as to reasonably minimise significant disturbance effects on marine mammals. Unless suitable noise mitigation measures can be imposed by requirements to any development consent the IPC may refuse the application.*

*The conservation status of marine European Protected Species and seals are of relevance to the IPC. The IPC should take into account the views of the relevant statutory advisors'.*

5.3.196. With regard to birds, section 4.3 of NPS EN-1 sets out the duties of the Applicant and decision maker in relation to the Conservation of Habitats and Species Regulations 2010, which implement the relevant parts of the Habitats Directive and the Birds Directive and are considered in more detail in Chapter 7 of this Report. NPS EN-3 states that the considerations in paragraphs 2.6.58 to 2.6.71 should inform decision-making.

5.3.197. The MPS also acknowledges<sup>154</sup> that offshore renewable energy developments can potentially have adverse impacts on marine mammals, principally through construction noise, and on certain bird species, which

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<sup>150</sup> Paragraph 2.6.59 of NPS EN-3

<sup>151</sup> Paragraph 2.6.68

<sup>152</sup> Paragraphs 2.6.115-2.6.117 of NPS EN-3

<sup>153</sup> Paragraph 2.6.94-95

<sup>154</sup> Paragraph 3.3.24 of the MPS

may be displaced by turbines, that also have the potential to form barriers to migration or present a collision risk.

- 5.3.198. In light of the mainly offshore nature of the matters within this section, no substantive comments were made in any of the submitted LIRs [[REP1-091](#), [REP1-098](#), [REP1-128](#)] about other policies considered to be important and relevant to the decision.

### **The Applicant's Case**

#### Subtidal habitats and benthic ecology

- 5.3.199. The Applicant's assessment of effects on subtidal habitats and ecology is presented in [[APP-046](#)]. Table 5.11 of that document outlines the embedded mitigation relevant to the topics which includes the BRMP, construction pollution prevention via the Project Environment Management Plan (PEMP) and cable burial where possible to minimise the effects of Electromagnetic Fields (EMF) on benthic communities. Table 5.18 of that document sets out a summary of the predicted impacts of the Proposed Development, all of which are assessed as either 'minor adverse' or 'not significant'.

#### Marine mammals

- 5.3.200. The applicant's assessment of effects on marine mammals is set out in [[APP-048](#)]. Table 7.15 of that document outlines the embedded mitigation within the project design in relation to marine mammals, and includes soft-start piling and the production of a MMMP for the construction phase (a draft of which was submitted at [[APP-146](#)]). Table 7.44 of that document summarises the predicted impacts of the Proposed Development. The assessment does not identify any significant effects to harbour porpoise, grey or harbour seal as a result of the project alone, but does predict an effect of moderate adverse significance on the North Sea harbour porpoise population due to underwater noise effects during the construction period when assessed cumulatively with other plans and projects.
- 5.3.201. The Applicant states<sup>155</sup>: 'If the impact of Thanet Extension were to be removed from this cumulative assessment, a moderate adverse effect would still be predicted for harbour porpoise based on the levels of impact from the other projects considered. Given this, it would not be possible to reduce this conclusion from a Moderate significance in EIA terms by the application of any mitigation specifically at Thanet Extension'. Consequently, no additional mitigation measures beyond those embedded in the project design are identified in this respect.
- 5.3.202. In response to NE's RR [[RR-053](#)], the Applicant submitted a clarification note at D1 on the implications of adopting the Joint Cetacean Protocol derived density estimates for harbour porpoise [[REP1-023](#)], as opposed to

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<sup>155</sup> Page 7-104 of [[APP-048](#)]

the SCANS III and site specific densities derived by the Applicant and presented as part of its original assessment [[APP-048](#)] [[APP-087](#)].

## Ornithology

- 5.3.203. The applicant's assessment of effects on ornithology is contained in [[APP-045](#)] (offshore ornithology) and [[APP-061](#)] (onshore biodiversity). Table 4.10 of [[APP-045](#)] identifies the only embedded mitigation for offshore ornithology as ensuring that the 4km buffer surrounding the array area did not extend into the Outer Thames Estuary SPA. Table 5.11 of [[APP-061](#)] covers embedded mitigation related to onshore ornithology and includes, amongst other things, the seasonal restrictions for non-breeding water birds set out in the 'Intertidal Habitats and Ecology' section of this chapter.
- 5.3.204. Table 4.40 of [[APP-045](#)] and Table 5.16 of [[APP-061](#)] summarise the predicted impacts of the Proposed Development on birds. For onshore ornithology, all residual impacts are found to be 'not significant' following implementation of embedded mitigation measures. The possible additional mitigation measures identified for ringed plover [[APP-061](#)] are dealt with in the 'Designated Sites' section of this chapter and were added to the DCO during the course of Examination.
- 5.3.205. For offshore ornithology, the project alone is not predicted to result in any residual impacts of greater than 'minor adverse' significance. However, when considered cumulatively with other plans and projects, a 'minor to moderate adverse' residual impact is identified in relation to red-throated diver as a result of direct disturbance and displacement in the operational phase. Also, when considered cumulatively, a moderate adverse impact was identified in terms of collision risk for great black-backed gull and a minor adverse impact was identified for gannet as result of collision risk.
- 5.3.206. The Applicant's position<sup>156</sup> was that: 'If the impact of Thanet Extension were to be removed from this cumulative assessment, a Moderate and Minor adverse effect would still be predicted for Gannet and Great black-b(ack)e(d) gull respectively based on the levels of impact from the other projects considered. It is not possible to apply project specific mitigation that would decrease this below Moderate and Minor. Therefore, the project's contribution to the cumulative impact is considered to be Negligible for Gannet and Great black-b(ack)e(d) gull'.

## Planning Issues

### *Subtidal habitats and benthic ecology*

- 5.3.207. The principal issues during Examination in relation to subtidal ecology were the potential effects on the MCZs as designated sites and biogenic reef as habitats of conservation importance, both of which are addressed elsewhere in this chapter.

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<sup>156</sup> Page 4-66 of in [[APP-045](#)]



- 5.3.208. In the early stages of the Examination, NE [[RR-053](#)] and the MMO [[RR-049](#)] expressed concerns about the transcription of the project description parameters contained in the ES into the submitted draft DCO. This included potential disparities in relation to the maximum parameters affecting the assessment of effects on benthic habitat in the ES and RIAA. The Applicant provided a 'Project Description Transcription into the Application' clarification note (Annex B of [[REP1-023](#)] which was subsequently revised at [[REP3-003](#)]) and an 'Offshore Project Description Clarification Note' (Annex A of [[REP1-023](#)], subsequently updated at [[REP3-053](#)], [[REP4C-006](#)] and [[REP5-046](#)] in response to detailed comments from NE at D3 [[REP3-075](#)] and D4 [[REP4-033](#)].
- 5.3.209. Table 3 of the final relevant NE SoCG [[REP6-019](#)] records a position of agreement that an appropriate degree of detail has been provided, following submission of the Applicant's clarification material, for the proposed construction and O&M activities to enable an informed assessment of the potential effects. Similarly, Table 4 of the final SoCG with the MMO [[REP6-011](#)] records agreement on this matter.
- 5.3.210. Table 3 of the MMO SoCG [[REP6-011](#)] raises a related matter about '*how the various clarification notes and supplementary documents produced since the ES will be incorporated into a finalised Environmental Statement*<sup>157</sup>. This was a concern shared by the ExA because in order to have certainty about the project description and the security of DCO requirements and DML conditions (several of which are limited '*to the extent that this has been assessed in the ES*'), it is necessary to have absolute clarity about what constitutes the ES to be certified for the purposes of the DCO.
- 5.3.211. The ExA directed questions to the Applicant at ExQ2.4.6 [[PD-016](#)] and again at ExQ3.8.1 [[PD-019](#)]. At D6, the Applicant [[REP6-026](#)] provided a definitive list of the documents submitted during the Examination that it intended to form part of the certified ES and updated Schedule 13 of its draft DCO [[REP6-068](#)] to reflect this position.
- 5.3.212. The ExA was concerned that the Applicant's revised drafting did not fully address the problem it had identified and asked a further question in this vein at R17Q4.8.1 [[PD-020](#)]. The Applicant's final draft DCO [[REP8-013](#)] contained a revised definition of the ES at Article 2 and (at Part 1 of Schedule 13) a list of documents forming the ES to be certified. Since these revisions took place after the submission of the final MMO SoCG, that document does not reflect the progress made and no specific response to the Applicant's amendments was submitted before the Examination closed.
- 5.3.213. In terms of other matters relating to subtidal habitats and benthic ecology, table 6 of the final NE SoCG [[REP6-016](#)] records agreement with the conclusions of the Applicant's assessment and with the position that the embedded mitigation measures are appropriate, with no further mitigation necessitated. The same position is reflected in Table 7 of the

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<sup>157</sup> Page 15 of the final MMO SoCG [[REP6-011](#)]

final MMO SoCG [REP6-011]. The final KWT SoCG [REP6-010] demonstrates agreement on the outcomes of the EIA but highlights outstanding concern about the adequacy of the post-construction benthic monitoring provisions. This was a matter examined orally at ISH3 [EV-026; EV-027; EV-028]. KWT's post-hearing submissions [REP3-081] outline its proposed additional monitoring provisions (page 6) and include reference to an MMO review of post-consent monitoring<sup>158</sup>.

- 5.3.214. The Applicant's response to KWT's submissions on this point are found at page 16 onwards of [REP4-005] and section 15 of [REP3-002]. It contends that the DCO provides for detailed monitoring for sensitive benthic habitats and that its approach is consistent with the aforementioned MMO review, which states that monitoring should not be required for impacts where there is already high certainty. It considers that, *'Thanet Extension is in a somewhat unique position as an extension to a project that has been the subject of detailed monitoring that has been published in peer review literature. There is therefore a higher than usual level of confidence in many of the assessments conclusions that draw on this site specific data, and when combined with the now mature understanding of the effects associated with the installation of OWFs no justification in broadscale monitoring'*<sup>159</sup>.
- 5.3.215. No specific response to these arguments was submitted by KWT but it is evident from the final SoCG [REP6-010] that this remained a matter in contention at the close of Examination.

### **Marine mammals**

- 5.3.216. The main marine mammals issues raised during Examination related to the HRA and are covered in Chapters 7 and 8 of this Report. The 'Protected Species' section of this chapter is also of relevance to this topic.
- 5.3.217. From an EIA perspective, Table 8 of the relevant final NE SoCG [REP6-016] documents a good level of agreement with the Applicant in terms of its assessment of effects on marine mammals. Reservations about how the Site Integrity Plan (SIP) process would be managed are evident from NE but there is a recognition that this issue is germane to the HRA process. Consequently, it records that, *'Natural England is satisfied that from an EIA perspective, the proposed mitigation is sufficient and impacts to the Southern North Sea SAC are identified within the RIAA'*.
- 5.3.218. Table 9 of the final MMO SoCG [REP6-011] indicates a broad level of agreement with the Applicant's assessment with two main exceptions. The first related to the timescales for the submission of the SIP specified in the DMLs and is dealt with at Chapters 7 and 11 of this Report. The

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<sup>158</sup> MMO (2014) 'Review of environmental data associated with post-consent monitoring of licence conditions of offshore wind farms'.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/317787/1031.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/317787/1031.pdf)

<sup>159</sup> Page 16-17 of [REP4-005]

second related to a concern from NE and the MMO that was sustained throughout Examination relating to the cessation of piling in the event that noise levels exceed those assessed within the ES.

5.3.219. NE originally requested [[RR-053](#)] a change to the wording of DML conditions on construction monitoring to reflect recent experience on the construction of Round 3 OWFs which had *highlighted that the standard condition, as drafted, may not be sufficient to ensure piling stops in a situation where the monitoring confirms there is a significant issue*<sup>160</sup>. This was supported by MMO [[REP1-108](#)].

5.3.220. The Applicant initially considered the additional wording to be unnecessary, citing existing powers available to the MMO to stop piling in these circumstances [[REP1-024](#)]. Following further exchanges on the matter, including at ISH7 [[EV-037](#); [EV-038](#)] and culminating in ExA comment no.44 of the DCO commentary [[PD-017](#)], the Applicant agreed [[REP6-034](#)] to secure the following provision within DML Conditions 17(3) (Schedule 11) and 16(3) (Schedule 12) of its final draft DCO [[REP8-013](#)]:

*'The results of the initial noise measurements monitored in accordance with sub-paragraph (1) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. The MMO may request that further monitoring is undertaken, unless otherwise agreed in writing with the undertaker. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different noise levels being generated to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed'.*

5.3.221. This addition was welcomed by the MMO [[AS-023](#)] and NE [[AS-024](#)]. Table 7 of the final KWT SoCG [[REP6-010](#)] identifies some outstanding concerns in relation to marine mammal effects. Part of the concern appears to reflect an in principle disagreement from the Wildlife Trusts with SNCB guidance in respect of the cumulative underwater noise effects on the Southern North Sea SAC. The SoCG also reiterates earlier comments on the MMMP and impacts of UXO clearance.

### **Ornithology**

5.3.222. The primary ornithology issues raised during Examination relate to the HRA and are covered in Chapters 7 and 8 of this Report. Potential effects on birds are also dealt with in the 'Designated Sites' section of this chapter.

5.3.223. Table 11 of the final NE SoCG covering onshore biodiversity [[REP6-016](#)] reflects broad agreement on all matters. Table 4 of the final NE SoCG for offshore ornithology [[REP6-015](#)] records general agreement on all matters but notes a number of areas in which NE does not agree with the Applicant's methodology, particularly in respect of collision risk modelling

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<sup>160</sup> Page 17 of [[RR-053](#)]

for the five seabird species assessed and the assessment of cumulative displacement effects on red-throated divers. NE notes that whilst it does not agree with the adopted methodology, it generally does not consider that changes to that methodology would affect the outcomes and conclusions of the assessment. These are matters that are discussed in more detail in relation to the HRA in Chapters 7 and 8 of this Report.

- 5.3.224. The provision by the Applicant of a Collision Risk Modelling Clarification Note ([[REP3-058](#)] and further [[REP4-029](#)] in respect of kittiwake) and commitment to an In Principle Offshore Ornithology Monitoring Plan [[REP3-057](#)] during Examination are both recognised by NE as giving comfort as to the findings on offshore ornithology as far as the EIA is concerned.
- 5.3.225. Following the introduction of the SEZ, the Applicant concluded [[REP4B-010](#)] that there was no anticipated change in the maximum adverse scenario assessed for offshore ornithology or onshore biodiversity assessments in the ES and they were therefore screened out of consideration<sup>161</sup>. This conclusion was not disputed by any of the IPs following consultation on the SEZ.
- 5.3.226. No particular matters pertaining to ornithological impacts were identified through the submitted LIRs [[REP1-091](#), [REP1-098](#), [REP1-128](#)].

## **ExA Response**

### ***Subtidal habitats and benthic ecology***

- 5.3.227. The ExA is satisfied that the initial concerns of NE and the MMO about the transcription of the project description parameters contained in the ES into the submitted draft DCO, particularly in relation to maximum parameters affecting the assessment of effects on benthic habitat, have been adequately addressed by the Applicant's clarification material submitted during the Examination [[REP1-023](#)]; [[REP3-003](#)]; [[REP3-053](#)]; [[REP4C-006](#)]; [[REP5-046](#)]. The ExA accepts the position, agreed between the Applicant and NE and the MMO, that an appropriate level of detail has been presented to enable an assessment of the potential effects on benthic ecology.
- 5.3.228. On the question of what constitutes the ES to be certified by the DCO, the ExA is content that the Applicant's revisions to its draft DCO [[REP8-013](#)], which amended the Article 2 definition of 'the Environmental Statement' and provided at Part 1 of Schedule 13 a list of documents forming the ES to be certified, provides a satisfactory response to the matter. Consequently, on the matter of benthic ecology effects, the ExA considers that there is sufficient clarity about the maximum parameters assessed in the ES to provide certainty about the security of the relevant DCO and DML provisions.

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<sup>161</sup> Noting that the implications for offshore ornithology in terms of HRA were updated following introduction of the SEZ, see Chapter 7 of this Report.

- 5.3.229. The ExA has considered the submissions of KWT that additional benthic monitoring should be secured within the DCO, particularly for the post-construction phase. Whilst the ExA recognises that there could be benefits in longer term monitoring studies and in combining surveying efforts between TOWF and TEOF, it is also mindful of the need for monitoring requirements to be proportionate and specific in terms of their intended outcomes.
- 5.3.230. The ExA notes that provisions are secured within the Applicant's final draft DCO (and DMLs) to take special account of sensitive subtidal habitats such as biogenic reef and those found within the MCZs, as reported earlier in this chapter. The ExA considers that the general pre-construction and post-construction monitoring conditions (Conditions 16 and 18 of Schedule 11 and Conditions 15 and 17 of Schedule 12 [[REP8-013](#)]), taken together with the specific measures for the most sensitive habitats, provide a reasonable suite of monitoring provisions for the Proposed Development, having regard to its scale and particular location. Being an extension project, the ExA accepts that monitoring data from the TOWF project has informed the EIA which means that there can be a reasonable level of confidence in its predictions in this regard.
- 5.3.231. Consequently, the ExA is satisfied that the Applicant's final draft DCO [[REP8-013](#)] secures adequate benthic monitoring measures and no additions are required. Overall, the ExA therefore finds that the Proposed Development has been designed taking into account the sensitive subtidal habitats in this location.

### ***Marine mammals***

- 5.3.232. The ExA welcomes the addition by the Applicant of wording within DML Conditions 17(3) (Schedule 11) and 16(3) (Schedule 12) of its final draft DCO [[REP8-013](#)] to allow the cessation of piling in line with the advice of NE and the MMO.
- 5.3.233. The ExA notes the general position of agreement with NE and the MMO in relation to marine mammal effects from an EIA perspective and refers to Chapter 7 of this Report in terms of the HRA perspective. The ExA has considered the outstanding concerns of KWT [[REP6-010](#)] on this topic. Where KWT's concern reflects an in principle disagreement with the SNCB guidance in relation to the Southern North Sea SAC, the ExA acknowledges the position but recognises that there is little that can be done within the scope of the Proposed Development before it to address those matters.
- 5.3.234. In terms of noise effects from UXO detonation, the ExA acknowledges that if required, this would be subject to an additional marine licence [[REP1-024](#)] and that KWT's concerns would be capable of being addressed through that licensing process.
- 5.3.235. Since the submitted MMMP [[APP-146](#)] was a draft document, pursuant to a final version that must be agreed prior to construction, the ExA considers that KWT's MMMP concerns are capable of being resolved through the finalisation of that protocol.

- 5.3.236. Therefore, having regard to all of the submitted evidence on marine mammal effects, the ExA is satisfied that the methods of construction for the offshore elements of the Proposed Development contained within the Rochdale Envelope have been designed so as to reasonably minimise significant disturbance effects on marine mammals. The ExA is clear that mechanisms have been put in place, including through embedded mitigation such as soft start piling, the requirement for approval of an MMMP prior to construction and the ability to stop piling should noise thresholds be exceeded, to secure suitable noise mitigation measures.
- 5.3.237. As such, the ExA is content that the provisions of NPS EN-3 (and particularly paragraphs 2.6.94-95) have been satisfied. In arriving at this position, the ExA has taken into account the views of the relevant statutory advisors and IPs with local ecological experience, including KWT.

### ***Ornithology***

- 5.3.238. The ExA's view on ornithological effects in relation to HRA (and therefore regarding section 4.3 of NPS EN-1) is set out at Chapter 7 and 8 of this Report.
- 5.3.239. In terms of the EIA approach to ornithology, and having regard to the additional clarification material submitted during Examination (summarised at [\[REP6A-004\]](#)), the ExA considers that the Applicant has presented an adequate assessment of the effects on birds and has secured appropriate mitigation and monitoring measures to minimise the potential impacts that have been identified. In this sense, the ExA takes the view that the policy requirements at section 5.3 of NPS EN-1, paragraphs 2.6.58 to 2.6.71 and 2.6.100 to 2.6.110 of NPS EN-3 and the MPS have been met.

### **Conclusion on Other Ecology Matters**

- 5.3.240. Taking all relevant documents and policies into account, the ExA concludes as follows:
- the Proposed Development has been designed taking into account the sensitive subtidal habitats and benthic ecology in this location;
  - the methods of construction for the offshore elements of the Proposed Development have been designed so as to reasonably minimise significant disturbance effects on marine mammals, and mechanisms have been put in place to secure suitable noise mitigation measures;
  - the ES, taken together with the additional clarification material submitted during Examination (summarised at [\[REP6A-004\]](#)), presents an adequate assessment of the effects on ornithology, and appropriate mitigation and monitoring measures have been secured;
  - overall, the relevant legislative and policy tests have been met; and
  - on balance, the topic is a neutral consideration in the overall planning balance.

## **Conclusion on Biodiversity, Ecology & the Natural Environment**

5.3.241. This section sets out the ExA's overall conclusions in relation to Biodiversity, Ecology and the Natural Environment. Taking all relevant evidence and policies into account, the ExA considers that the following should be considered in the planning balance.

### **Designated sites:**

- Any adverse impacts on designated sites and features are effectively mitigated and that mitigation is appropriately secured. As such, the relevant legislative and policy tests have been met and no changes to the DCO are proposed.
- This finding is a neutral consideration in the overall planning balance.

### **MCZs:**

- There would not be a significant risk of hindrance to the achievement of the conservation objectives stated for any MCZs as a result of the Proposed Development and the relevant legislative and policy tests have been satisfied. Adequate security for mitigation and monitoring is provided within the Applicant's final draft DCO and no changes are required.
- This finding is a neutral consideration in the overall planning balance.

### **Intertidal habitats and ecology:**

- A change to the DCO is required to include the SMRMP in the list of pre-construction plans and documentation to be approved under the DML at Schedule 12 in order to provide adequate security for the mitigation measures contained therein. Any adverse impacts on intertidal habitats are effectively mitigated and, subject to the aforementioned DCO change, that mitigation is appropriately secured. Accordingly, the relevant legislative and policy tests have been met.
- If the proposed DCO change is implemented, this finding is a neutral consideration in the overall planning balance.

### **Fish and shellfish ecology:**

- The ExA does not believe it has been provided with sufficient evidence to enable it to agree with the Applicant's conclusions about the impacts of the Proposed Development on fish ecology, and specifically herring and sole spawning activities, as required under NPS EN-3 and the MPS. Consequently, a precautionary approach should be taken, and seasonal restrictions should be imposed by Condition on both DMLs as mitigation for potential impacts on the spawning grounds of Thames and Downs herring sub-stocks and Dover sole. This necessitates a change to the DCO. Subject to that change, there is adequate security for all of the required mitigation and that the policy tests have been satisfied.
- If the proposed DCO change is implemented, the ExA's findings are a neutral consideration in the overall planning balance.

**Protected species:**

- The Applicant has adequately assessed the potential impacts on protected species and the relevant legislative and policy tests have been met.
- This finding is a neutral consideration in the planning balance.

**Subtidal habitats and benthic ecology:**

- The Proposed Development has been designed taking into account the sensitive subtidal habitats and benthic ecology in this location. As such the relevant legislative and policy tests have been met.
- This finding is a neutral consideration in the overall balance.

**Marine mammals:**

- The methods of construction for the offshore elements of the Proposed Development have been designed so as to reasonably minimise significant disturbance effects on marine mammals, and mechanisms have been put in place to secure suitable noise mitigation measures. Consequently, the relevant legislative and policy tests have been met.
- This finding is a neutral consideration in the overall planning balance.

**Ornithology:**

- The ES, taken together with the additional clarification material submitted during Examination (summarised at [[REP6A-004](#)]), presents an adequate assessment of the effects on ornithology, and appropriate mitigation and monitoring measures have been secured. Overall, the relevant legislative and policy tests have been met.
- Taken together, biodiversity considerations not related to HRA or Natura 2000 sites make a net neutral contribution to the planning balance.

**Planning balance summary:**

- Taken together, biodiversity, ecology and natural environment considerations are net neutral in the planning balance.

## **5.4. TOWNSCAPE, SEASCAPE, LANDSCAPE & VISUAL EFFECTS**

### **Introduction**

- 5.4.1. This section deals with the onshore and offshore landscape and visual effects of the Proposed Development. It reviews the seascape, landscape and visual impact assessment (SLVIA) and landscape and visual impact assessment (LVIA) chapters of the Environmental Statement (ES). The location and nature of the Proposed Development, including extensive visibility to the WTG array area from a number of coastal settlements might have been expected to be a matter of significant concern for onshore communities. In the event however, seascape, landscape and visual impact did not give rise to a large number of representations.



- 5.4.2. There is some cross-linkage between this topic and Historic Environment considerations (visual impact on the setting of heritage assets) which is reported on Chapter 5.5 of this document.

## **Policy Considerations**

- 5.4.3. NPS EN-1 (paragraph 5.9.5) requires the applicant to carry out a landscape and visual assessment and report it in the ES. EN-1 confirms that references to landscape should be taken as covering seascape. The assessments are to include effects on landscape components, on landscape character and on views and visual amenity during construction of the project and its operation (paragraph 5.9.6). Factors to be taken into account when judging impact on a landscape include the existing character of local landscape, its current quality, how highly it is valued and its capacity to accommodate change (paragraph 5.9.8).
- 5.4.4. NPS EN-1 accepts that virtually all nationally significant energy infrastructure projects will have effects on the landscape. In terms of visual impact, the decision maker is expected to '*judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project.*'
- 5.4.5. Paragraph 5.9.16 of EN-1 advises: '[t]he [SoS] should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by reasonable mitigation.'
- 5.4.6. NPS EN-3 refers to the generic and visual impacts covered in EN-1 but recognises that for offshore wind farms seascape is an additional issue for consideration (paragraphs 2.6.198 & 2.6.199).
- 5.4.7. Paragraph 2.6.202 of NPS EN-3 advises that where an offshore wind farm would be visible from the shore, a Seascape, Landscape Visual Impact Assessment (SLVIA) is to be undertaken, which is to be proportionate to the scale of the potential impacts.
- 5.4.8. Paragraph 2.6.203 of NPS EN-3 advises that where necessary, assessment of the seascape should include an assessment of three principal considerations on the likely effect of OWFs on the coast:
- limit of visual perception from the coast;
  - individual characteristics of the coast which affect its capacity to absorb a development; and
  - how people perceive and interact with the seascape.
- 5.4.9. Paragraph 2.6.5.3 of the MPS advises that the existing character and quality of a seascape, how highly it is valued and its capacity to accommodate change should be taken into account when considering the impact of a development on seascape. Any development proposed within or relatively close to nationally designated areas should have regard to the specific statutory purposes of the designated areas.

- 5.4.10. The Kent Downs Area of Outstanding Natural Beauty (AONB) lies 13 km to the south and south-west of the onshore elements of Proposed Development, but the ExA has had regard to potential effects upon it. A general duty is placed on public bodies (including the ExA and the SoS) by s85(1) of the Countryside and Rights of Way (CRoW) Act 2000 (as amended), which expects a relevant authority to have regard to the purpose of conserving and enhancing the natural beauty of an AONB.
- 5.4.11. NPS EN-1 paragraph 5.9.12 advises that the SoS' duty to have regard to the purposes of nationally designated areas applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The policy aim is to avoid compromising the purposes of designation. However, as paragraph 5.9.13 makes clear: *'[t]he fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent.'*
- 5.4.12. Relevant development plan policies are identified in the TDC [\[REP1-128\]](#) and DDC [\[REP1-091\]](#) LIRs as follows.
- 5.4.13. Thanet District Council (TDC) 2006 Local Plan Saved Policies
- POLICY D7 - Areas of high townscape value
  - POLICY CC2 - Landscape character areas
- 5.4.14. Dover District Council - Saved Policies
- POLICY CO5
- 5.4.15. Dover District Council (DDC) LDF Core Strategy 2010
- Policy DM 16 – Landscape Character
  - Policy DM 19 - Historic Parks and Gardens
- 5.4.16. Thanet District Council (TDC) Draft Thanet Local Plan 2031 –Preferred Options Consultation (2019):
- Policy CC04 encourages the use of renewable energy installations in new and existing development whilst mitigating against any detrimental effects.
  - Policy SP21 concerns development in the countryside applying the same test as saved policy CC1 from the 2006 plan, with the additional proviso that any adverse environmental effects should be avoided or fully mitigated.
  - Policy SP23 – concerns protection and enhancement of Thanet's historic landscapes<sup>162</sup>.

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<sup>162</sup> The TDC LIR [\[REP1-128\]](#) notes that the examination draft of this policy, *'... seeks to ensure the protection and enhancement of Thanet's historic landscapes, with proposals expected to demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance Thanet's local distinctiveness, including long-distance, open views, particularly across the Dover Strait and English Channel, North Sea and across adjacent lowland landscapes. All development should seek to avoid skyline intrusion and the loss*

## The Applicant's Case

### Assessment of Offshore elements

- 5.4.17. [APP-053] ES Volume 2 Chapter 12 presents the Seascape, Landscape and Visual Impact Assessment (SLVIA) for the offshore elements of the proposed Thanet Extension Offshore Wind Farm (TEOW) during the construction, operations and maintenance (operation) and decommissioning phases.
- 5.4.18. The SLVIA evaluates the effects of the offshore Wind Turbine Generators (WTGs), Offshore Substation (OSS) and Offshore Meteorological Mast (OMM) within the TEOW, collectively referred to as the 'Offshore WTG Array'. The SLVIA identifies and assesses the significance of changes resulting from the Offshore WTG Array to both the seascape/ landscape as an environmental resource in its own right, and on people's views and visual amenity. It also assesses the cumulative effects of the Offshore WTG Array in conjunction with other developments. The SLVIA also assesses the construction stage effects of offshore construction activity within the Export Cable Corridor.
- 5.4.19. As a consequence of s42 consultation comments from stakeholders on the Preliminary Environmental Information Report (PEIR), the proposed OWF area was reduced at its north-western corner by a change in the Red Line Boundary (RLB). This change to the OWF area resulted in a new worst-case scenario WTG layout for the SLVIA, with the WTGs in the north-western part of the PEIR OWF area being moved to other parts of the OWF area. This change provides further partial mitigation of some seascape, landscape and visual effects assessed in the PEIR.
- 5.4.20. A checklist in tabular form of compliance with legislation and policy context is provided as Table 12.1 of the SLVIA [APP-053].
- 5.4.21. The SLVIA has been carried out with reference to published Landscape Character Assessments (LCAs). LCAs for the study area and policies are referred to in section 12.7 of the SLVIA.
- 5.4.22. The value of the local landscape is a consideration within the SLVIA, which is assessed as part of the landscape assessment in section 12.11 of the SLVIA.
- 5.4.23. The following effects of the Offshore WTG Array are assessed by the SLVIA [APP-053]:
- on nationally designated areas in section 12.11;
  - on seascape character in section 12.10;
  - on Heritage Coasts in section 12.11; and
  - Kent Downs AONB located at long distance to the south west of the Offshore WTG Array in the section 12.11.

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*or interruption of long views of the coast and the sea, and proposals should demonstrate how the development will take advantage of and engage with these views.'*

- 5.4.24. Being a proposed extension to the existing Thanet Offshore Wind Farm (TOWF) the existing WTGs can be used as a scale comparison to assist with the magnitude assessment of the proposed Offshore WTG Array. The SLVIA model is based on the use of a single WTG model for the Offshore WTG Array within the OWF area.
- 5.4.25. The Applicant notes at 12.4.22 of the SLVIA that 'Due to its location encompassing all sides of TOWF, the Offshore WTG Array will generally be viewed in-combination with TOWF and is therefore likely to result in changes resulting from its addition to the existing TOWF, with the magnitude of change varying according to factors such as its consistency of image and degree of contrast or integration with TOWF, as well as other factors, such as its distance, lateral spread and amount of visibility. "In-combination" effects with operational OWFs therefore form an integral part of the assessments undertaken for the Offshore WTG Array in sections 12.10, 12.11 and 12.12...'.
- 5.4.26. Section 12.5.17 and following paragraphs of the SLVIA explain in detail how significance of effects is assessed. 'The objective of the assessment of effects on visual receptors is to determine what the likely effects of the Offshore WTG Array will be on the people experiencing views across the study area, and whether these effects will be significant or not significant.'
- 5.4.27. Assessment of the 'likely significant effects' of the Offshore WTG Array was undertaken within a SLVIA study area of 45 km radius, which was justified by the Applicant based on published guidance, the Zone of Theoretical Visibility (ZTV) for the Offshore WTG Array (Figure 12.5 [[APP-126](#)]), analysis of Met Office visibility data as described in section 12.4 of [[APP-126](#)] and feedback from stakeholders during consultations. Met Office data shows that visibility frequency drops sharply at longer distances, such that visibility over 45 km occurred for only 9% of the time over the 10-year period between 2007–2017. This would equate to approximately 36 days per year on average when there could be theoretical blade tip visibility of the Offshore WTG Array [[APP-126](#)] beyond 45 km.
- 5.4.28. Viewpoints were selected and agreed following scoping responses and in consultation with the SLVIA technical group as part of the Evidence Plan process. Photomontages of TEOW are provided in ES Volume 6, Annex 12-2, Figures 5.27 – 5.55 [[APP-127](#)] and [[APP-128](#)] that present the existing and proposed views of the Offshore WTG Array; other OWFs are shown in each viewpoint to illustrate the potential cumulative effect.
- 5.4.29. Following the Feb 2017 Scoping Opinion from the Planning Inspectorate the England Coast Path was assessed as a key walking route and a representative viewpoint (Viewpoint 18 - Sandwich Flats, further north than Sandwich Bay Estate) was included.
- 5.4.30. Responding to consultation with local authorities the following were included in the SLVIA for assessment of visual effects:

- Thanet DC: a viewpoint from Broadstairs, Dumpton Gap (Viewpoint 17 – Figure 12.43)
- Dover DC: viewpoints from St Peter’s Church in Sandwich (Viewpoint 20 – Figure 12.46), Dover Castle (Viewpoint 24 – Figure 12.50) and South Foreland Lighthouse (Viewpoint 23 –Figure 12.49) and a wireline visualisation was included as an illustrative viewpoint from Goodwin Sands (Viewpoint 25 – Figure 5.55)
- Rochford, Maldon and Tendring District Councils and Essex County Council: Additional viewpoints at Foulness Point, Dengie Marshes and Clacton-on-sea with wirelines visualisations from these viewpoints shown in Figures 12.53, 12.54 and 12.55.

5.4.31.

In the SLVIA [[APP-053](#)] Table 12.23 the following detailed assessments resulted in ratings of ‘significant’ visual effects, but the Applicant concludes in each case that TEOW: *‘...increases the influence of WTGs, which are already present in the existing view, without introducing entirely new or uncharacteristic elements to the view; it is considered that the view is able to accommodate further change of the nature proposed without unacceptable visual effects.’*

- Westbrook Public Open Space/ Thanet Coastal Path (viewpoint 2) with views to the east towards the TEOW and the existing TOWF partially behind the mass of the built-up area of Margate above the harbour; good or better visibility needed for WTGs to be apparent at a distance of 14.2km. (71% of the time) occupying 32% of the field of view, compared with 11% for the existing TOWF ;
- Kingsgate/North Foreland, Coastal Path (viewpoint 4) where the views towards TEOW is across Kingsgate Bay and in the foreground of the TOWF; moderate or better visibility is required for the WTGs to be apparent at 8.7km (84% of the time) occupying 49% of the field of view, compared with 28% for the existing TOWF;
- Broadstairs Promenade (viewpoint 5) with views across Viking Bay to the north-east where WTGs would be visible at 10.5km in moderate or better visibility (79% of the time) occupying 49% of the field of view, compared with 22% for the existing TOWF;
- Wellington Crescent, Ramsgate (viewpoint 6) with oblique views to TOWF within a panoramic sea view from the promenade and coastal path with WTGs theoretically visible at 13.3km in good or better visibility (71% of the time) occupying 37% of the field of view, compared with 21% for the existing TOWF;
- Princes Drive Sandwich Bay Estate (viewpoint 8) with panoramic view over mudflats and saltmarsh with TEOW visible partially over Ramsgate Harbour in the northern part of the view at 19.9km in good or better visibility (56% of the time), occupying 31% of the field of view, compared with 19% for the existing TOWF.
- Joss Bay/ North Foreland (viewpoint 11) where the views from the coastal path towards TEOW is framed within the view across Joss Bay and in the foreground of the TOWF; moderate or better visibility is required for the WTGs to be apparent at 8.7km (84% of the time) occupying 51% of the field of view, compared with 29% for the existing TOWF;

- Stone Bay (viewpoint 12) where the viewpoint is located on Eastern Esplanade within the northern part of Broadstairs in the East Cliff area. All of the existing TOWF WTGs are visible at 12.5km to the east, central to the view across Stone Bay; moderate or better visibility is required for the TEOW WTGs to be apparent at 9.8km (82% of the time) occupying 50% of the field of view, compared with 28% for the existing TOWF;
- Foreness Point/Palm Bay (viewpoint 13) where the viewpoint is located on the Thanet Coastal Path near Foreness Point, between Palm Bay and Botany Bay. All of the existing TOWF WTGs are visible at 11.8km to the east; moderate or better visibility is required for the TEOW WTGs to be apparent at 9.1km (84% of the time) occupying 46% of the field of view, compared with 26% for the existing TOWF;
- Walpole Bay (Margate- viewpoint 14) where there are oblique views to the east along the Margate cliffs towards TOWF visible at 14.2 km; good or better visibility is required for the TEOW WTGs to be apparent at 11.5km (69% of the time) occupying 38% of the field of view, compared with 23% for the existing TOWF;
- Birchington-on-Sea (viewpoint 15): 'located on the Thanet Coastal Path above Grenham Bay in an area of open amenity parkland on the clifftop'; existing TOWF WTGs are visible at 20.4 km to the east along the coast; this is a similar but more distant view than that from viewpoint 2 at Westbrook POS; very good or excellent visibility is required for the TEOW WTGs to be apparent at 17.8km (53% of the time) occupying 27% of the field of view, compared with 16% for the existing TOWF;
- Manston Road, Isle of Thanet (viewpoint 16): 'located on Manston Road, on the high land in the centre of Thanet. It is sited on
- Manston Road, adjacent to a PRoW...The existing TOWF is theoretically visible, but in reality it is screened by intervening urban areas and tree belts and is not visible in the view.' Good or better visibility is required for the TEOW WTGs to be apparent at 14.6km (68% of the time).
- Broadstairs, Dumpton Gap (viewpoint 17), located on the West Cliff Promenade footpath to the north of Dumpton Gap at the southern end of Broadstairs. 'All of the existing TOWF WTGs are visible at 13.9km to the north east, at the left hand edge of the wide sea panorama.' Good or better visibility is required for the TEOW WTGs to be apparent at 11.2km (76% of the time) occupying 46% of the field of view, compared with 26% for the existing TOWF;

5.4.32. In the SLVIA assessments above, the percentage frequency of theoretical visibility at or beyond the distance quoted is taken over a 10-year period 2007-2017 from Manston Airport Met Office Visibility Data.

5.4.33. The Applicant introduced a material change to the application at Deadline 4 at the end of March 2019 in the form of a SEZ with the effect of relocating WTGs from the north west part of the array further to the east. This has the effect of reducing the lateral spread of WTGs as seen from many of the viewpoints onshore. Further consultation with statutory bodies and other stakeholders was then completed before the end of the Examination. Wireline visualisations were produced and the conclusion

of the relevant chapter of the SEZ Consultation Report [[REP5-026](#)] (paragraph 32) was that *'it is evident that although the SEZ layout is unlikely to result in reduced levels of overall significance on seascape, landscape and visual receptors (in EIA terms), the SEZ layout will result in additional mitigation of some of the key landscape and visual effects that are under consideration in this examination.'* At [[REP6-044](#)] the Applicant reports that DDC, KCC and TDC<sup>163</sup> made no response to the consultation about the SEZ material change.

### **Assessment of Onshore elements**

- 5.4.34. The landscape and visual effects arising from the onshore substation and onshore cable route required to connect the Offshore WTG Array to the national grid are assessed in Volume 3, Chapter 2 of the ES [[APP-058](#)].
- 5.4.35. There are no international, national or regional landscape designations within the onshore LVIA study area.
- 5.4.36. Potential LVIA effects noted in the ES are either temporary effects in relation to construction or long-term effects of the onshore substation with a Rochdale Envelope maximum design parameter of 14 metres height.
- 5.4.37. Embedded mitigation for visual impact includes siting choice in an already industrial area near to structures of similar scale; and screening by established tree rows and proposed further mitigation by additional tree planting as agreed with Dover DC during consultation at PEIR stage.
- 5.4.38. Effects on landscape character from cable landfall infrastructure are assessed as not significant following the removal of the bunded option for cable landfall (Landfall Option 2).
- 5.4.39. Physical effects to existing landscape features of groundcover or scrub are assessed by the ES to be not significant during construction, operation and decommissioning. Mitigation proposed in the ES is the *'restoration of disturbed areas of ground within the working corridor of the cable route and re-establishment of ground cover'*, secured by reference to the OLEMP [[REP1-069](#)] submitted following the removal of the bunded option for cable landfall.
- 5.4.40. The ES assesses effects to existing trees to be not significant during construction, operation and decommissioning, referencing the removal of *'much of the remaining triangular stand of trees at the boundary between the Country Park and Nature Reserve (already substantially reduced by the NEMO cable bund construction); the removal of an area of the scattered hawthorn scrub within the Nature Reserve; the removal of scattered scrub and individual small trees to the south and east of Nemo in the Country Park; the removal of a small section of the poplar trees at the recreation ground; and the removal of small sections of*

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<sup>163</sup> These conclusions were provided to the SEZ consultation report and none of the local authorities made any contradictory submission directly to the ExA.

*boundary trees along the western banks of the Stour... There are no tree and scrub removals as a result of the substation construction.'*

- 5.4.41. In the conclusion to the SLVIA [APP-053] the Applicant notes no interrelated seascape effects and the seascape character receptors would be affected only by the offshore WTG array. Landscape Character Areas that required further assessment of interrelated effects between onshore and offshore elements of the Proposed Development include Pegwell Bay, Sandwich Bay, Ramsgate and Broadstairs Cliffs and the Sandwich corridor. The Applicant concludes: '*[s]ignificant inter-related effects are therefore assessed as being spatially contained to a limited area around Pegwell bay during a brief period of overlap during the onshore and offshore construction phases, which is susceptible to changes arising from construction of both the Offshore WTG Array and the onshore cable route.'*
- 5.4.42. The assessment of interrelated effects on specific viewpoints concluded that only one, LVIA viewpoint 4 Sandwich Flats had any significant combined effects due to '*the combination of the views of the Offshore WTG Array and onshore substation have a medium magnitude of change and therefore a significant effect on the medium to medium-high susceptibility walkers using the England Coastal Path at Sandwich Flats.'*
- 5.4.43. Although the visual effects and cultural heritage effects experienced at the locations identified in Table 12.31 of the SLVIA [APP-053] may be considered as inter-related effects, it is considered by the Applicant that they do not combine to create a greater significant effect, '*since visual effects and cultural heritage effects arising are distinct effects on different receptors, with visual effects arising on views experienced by people and cultural heritage effects arising from changes in the setting of the historic environment asset.'*

## **Planning Issues**

- 5.4.44. There was not a substantial body of community concern on LVIA and SLVIA considerations raised by IPs and OPs in the Examination. LIRs from and SoCGs with the Local Authorities raised relevant matters. There was only one other RR concerned with visual impact, from Mr Ian Hide [AS-013], a private individual who was concerned at the adverse effects of tall WTGs.
- 5.4.45. The SLVIA [APP-053] (page 12.19) reports s42 consultation responses from Thanet DC including the following observations: '*Whilst it is appreciated that due to the increase in height of the new turbines their appearance would have some effect on the skyline beyond Margate in views from the west, we accept that the significance of these views to the overall character and significance of the heritage assets would be limited and, as with the existing turbines, they will be assimilated as part of the skyline views... We are therefore satisfied with the way in which the visual impacts, in terms of the landscape and historic environment, have been assessed'*.



- 5.4.46. The SLVIA [[APP-053](#)] (page 12.15 and 12.16) reports s42 consultation responses from Dover DC including the following observations:
- 'Viewpoint 9 Richborough Castle: The visual impact, in terms of height, will not be dissimilar from that for views from Deal, although the complex terrestrial landscape in the foreground will lessen any impact...
  - The visibility of TOWF is variable, both dependent on atmospheric conditions (mist, haze) as well as time of day and cloud cover. On a bright afternoon with sunlight catching its masts and blades TOWF may be clearer than illustrated on the baseline imagery. Viewpoint 8, which utilises a photomontage of TOWF, is of great assistance in presenting a worst-case scenario...
  - Viewpoint 8 Sandwich Bay Estate: The use of photomontages of both the existing wind farm and the proposed extension is helpful. As such, they illustrate that the extension will have a significantly greater effect than the existing, particularly due to the turbines closer to the shore and those which do not benefit from the existing wind farm as a backdrop. Of particular note are the southern group of turbines...
  - Viewpoint 18 The England Coast Path, Sandwich Flats: The view is cluttered, inevitably, as the bulk of the TEOWF is beyond Ramsgate Harbour Arm, extending northwards 'behind' Thanet. The Nemo cable-laying barge may add to the clutter. The southern three turbines remain oddly separated from the rest.'
- 5.4.47. The LIR from Thanet District Council [[REP1-128](#)] states: *'The Council has raised concerns throughout the process about the visual impact on Thanet's coastal environment due to the high visibility of the seascape and the increased proximity and height of the proposed extension to the wind farm, particular from locations at Kingsgate, North Foreland and Broadstairs, with increased prominence on views from Thanet beaches all along the coastline, as well as views of the seascape from the centre of the district... localised impacts within the Pegwell Bay Country Park and Stonelees Nature Reserve would occur from above ground berm and transition joint bays on the landscape...'*
- 5.4.48. The LIR from Thanet District Council [[REP1-128](#)] does however recognise that there is no clear mitigation that can be offered to further reduce the effect of the WTG structures offshore. The mitigation of onshore impacts relates to the visual treatment of onshore structures and most particularly the proposed berm related to Landfall Option 2 and the above ground passage of the cable alignment through Pegwell Bay Country Park, the removal of which further mitigates a key outstanding concern.
- 5.4.49. Concerning the offshore/seascape impacts of the Proposed Development the LIR from Dover District Council (DDC) [[REP1-091](#)] includes the following concerns:
- 'The presence of the extra turbines, larger than the original, some occurring nearer the coast than TOWF: does the proposal change the character of that part of the sea when seen from land?'

- The distinctiveness of Sandwich and Pegwell Bays as seen from land is compromised by the views of the northernmost turbines which create a partial enclosure of the north of the character area and,
- The southern peripheral turbines (three) have the effect of 'spread' when seen from land...The somewhat removed appearance of the southern peripheral turbines in this context appears constant and cause a visual effect that is considered significant...*Viewpoint 8, which utilises a photomontage of TOWF, is of great assistance in presenting a worst-case scenario...This viewpoint continues to represent the most relevant view from Dover District...Any reduction in the extent of the array in a southerly direction could mitigate or remove DDC's concern regarding the visual impact on the seascape from DDC's administrative area.'*

- 5.4.50. In regard to the SLVIA, in the final SoCG rev B [[REP3-045](#)] Thanet DC agreed that the outcomes of the assessment are appropriate and accurately describe the likely impacts and *'the proposed management and mitigation as identified within the ES chapter are appropriate.'*
- 5.4.51. The LIR from DDC [[REP1-091](#)] states: *' In terms of the submitted onshore Landscape and Visual Impact Assessment (LVIA), associated photomontages and identified viewpoints, initial concerns raised by DDC in the S42 consultation response have largely been addressed in the submission of additional viewpoints, photomontages and a technical report (Doc. Refs: Volume 6 Annex 2-1 Rev A ref: 6.6.21.1 & Annex 2-2). These seek to clarify a number of concerns raised in respect of the visual impact of the proposed sub-station on views from the wider landscape and from publically [sic] accessible routes including public footpaths... Although the proposed substation and associated works will result in a large structure, the surrounding context of the site including Richborough Energy Park and nearby commercial and industrial uses, adjacent to an A road, along with existing trees and structural planting will all mitigate and minimise the level of harm from the proposed structure... All these factors address the concerns identified and DDC are satisfied that these measures, subject to the submission of reserved matters and details, will adequately mitigate and address any visual or landscape concerns that were previously identified. On the basis DDC does not wish to raise any further concerns in respect of this aspect of the proposal.'*
- 5.4.52. The LIR from Dover District Council (DDC) [[REP1-091](#)] specifically identifies the removal of Landfall Option 2 as having mitigated a key residual concern. In the final SoCG rev B [[REP3-086](#)] signed by DDC, the removal of the extended seawall and bunded construction to shelter the onshore cable alignment are specifically welcomed and previous concerns in this regard are identified as having been satisfactorily addressed.
- 5.4.53. In regard to the SLVIA, in the final SoCG rev B [[REP3-086](#)] DDC nevertheless retain their view that the Proposed Development would give rise to some adverse impacts from seascape viewpoints and identifies that the effect of this is in its view minor to moderate adverse.

## ExA Response

- 5.4.54. Although there were few representations on this topic, the ExA nevertheless reviewed it with care, to ensure that the Proposed Development was tested against NPS and other important and relevant policy. A number of Unaccompanied Site Inspections (USIs) of publicly accessible land between Dover and Reculver [[EV-001](#)] [[EV-008](#)] [[EV-040](#)] [[EV-062](#)] enabled the ExA to review SLVIA and LVIA conclusions from relevant onshore receptor and assessment locations. Specific inspections were made from Dover Castle and environs, St Margaret's at Cliffe, Kingsdown, Walmer and Deal, Sandwich Bay and Sandwich, Richborough Roman Fort, Cliffsend, Ramsgate, Broadstairs, Margate, Westgate-on-Sea and Reculver Towers.
- 5.4.55. Longer range considerations (in essence a validation of the Applicant's selection of the extent of the SLVIA study area enabling the ExA to deliberate on the absence of SLVIA receptor locations on the Belgian and French coasts) were evaluated through a USI to the Essex coast [[EV-043](#)]. Conclusions in relation to proposed onshore development were also reviewed from an ASI to private land in Richborough Port and Richborough Energy Park [[EV-010](#)].
- 5.4.56. The ExA accepts the conclusions of the LVIA in the ES and notes that following the Applicant's decision not to proceed with the above ground cable Landfall Option 2 (thereby avoiding the impact of above-ground Transition Joint Bays and berm), no concerns were sustained at the end of the Examination by IPs about the onshore landscape and visual impact of the Proposed Development.
- 5.4.57. The ExA notes that there were no issues outstanding from Thanet DC in regard to their local plan 2006 saved policy on areas of high townscape value. The ExA accepts the assessment in the SLVIA as noted above that although there are inter-related visual effects and cultural heritage effects experienced at the historic environment asset locations identified in Table 12.31 of the SLVIA, it is considered by the Applicant that they do not combine to create a greater significant effect.
- 5.4.58. Assessment of the 'likely significant effects' of the Offshore WTG Array was undertaken within a SLVIA study area of 45 km radius Blade Tip ZTV, illustrated in the SLVIA Technical Study at Figure 12.5 [[APP-126](#)]. At sea level this 45 km. zone, taken from the application RLB, touches the Essex coast at Clacton-on-Sea and includes part of Foulness Island at the northern extremity of the Thames estuary. Within Kent it includes Thanet District, Dover District, most of Canterbury District, a small part of Swale District and the eastern extremities of Ashford District and Shepway District. The ZTV is about 2km short of the French coastline at sea level. A further consideration is the theoretical visibility of blade tips from an elevated position. The ExA assesses that the nearest open space position on the French coastline that is similar in elevation to the Essex coastline near Clacton is the Batterie Oldenburg at Calais with an elevation above sea level of about 7 metres. Locations on the Belgian

coast are at a relevant further distance and so any theoretical impact is further reduced.

- 5.4.59. The ExA notes that USI4 [EV-043] with views across the Thames estuary from the coastline between Clacton-on-Sea and the Naze Tower, Essex, reviewed the basis for the Applicant's establishment of its study area boundary for SLVIA and the ExA considers this location and elevation to be a fair proxy for reciprocal views across the Dover Strait from the coast of France towards the Proposed Development. Taking this observation into account, the ExA is content that the Applicant's decision not to undertake a detailed review of receptors on the French (or Belgian) coast in the SLVIA is broadly justified as visual impact at that range would be minimal and give rise to no significant adverse effects.
- 5.4.60. Figure 12.11 of [APP-126] illustrates other existing Wind Farms in nearby UK waters. The Applicant has also provided, as [REP3-008], examples of other relevant offshore wind farm projects that demonstrate *'enveloping an existing offshore wind farm with additional wind turbine generators (WTGs) at a larger scale than the WTGs installed in the original 'host' OWF (referred to in the hearing as a 'donut' or 'enveloping' effect).'*. In particular, an as-built panoramic photograph of Kentish Flats and Kentish Flats Extension is presented in the SLVIA [APP-127] Photomontages (Part 1 of 2) from Viewpoint 1 Reculver on the north Kent coastline (Figure 12.27b). This has some relevance to the TEOW application as it shows the extension in the foreground of the original array at a range of rather less than 10km from the viewpoint, albeit there is some contextual difference from the Thanet Extension proposals because at Kentish Flats the lines of orientation and symmetry appear to extend the original and there are no evident major scale differences between the extension WTGs and the original WTGs.
- 5.4.61. The ExA notes that the visual impact of the proposed WTGs has been assessed as significant to receptors along the England Coastal Path and multiple viewpoints between Birchington on Sea (west of Margate) round the North Foreland to Dumpton Gap south of Broadstairs and therefore should be considered in the planning balance.
- 5.4.62. The Examining Authority (ExA) undertook an unaccompanied site inspection (USI5) on the afternoon of 15 April 2019 to inspect views from Reculver and other views from the North Thanet coast, Westgate and Margate. This USI5 [EV-062] supplemented USI1, 30 October 2018, to inspect viewpoints on the west Thanet coast as far as North Foreland [EV-001] and USI2, 10 and 13 December 2018, in order to inspect viewpoints to the Proposed Development on the North Thanet coast [EV-008].
- 5.4.63. Informed by inspections at USI1, USI2 and USI5 referenced above, the ExA recognises the significant scale difference of proposed WTGs much larger than those of the existing TOWF, located on all sides of the existing array and with spacing and lines of orientation and symmetry that differ from the existing.

- 5.4.64. The ExA considers that in moderate or better visibility conditions this would produce a minor adverse effect, which is not capable of mitigation, to receptors located on the Thanet coast with sea views towards the Proposed Development at distances of approximately 9km at the closest point. The ExA acknowledges the LIR from TDC [REP1-128] which recognises that there is no mitigation that can be offered on this point of concern. In relation to receptors on the Thanet coast, the ExA also notes the representation from Historic England that the effect of negative visual impact from the offshore WTGs would result in a low level of harm to the setting of Margate Conservation Area (which was agreed in a final SoCG with the Applicant [REP6-007]).
- 5.4.65. The Proposed Development would be visible partially over Ramsgate Harbour in the northern part of the view across Pegwell Bay from Sandwich Bay Estate and Sandwich Flats at about 20km range therefore theoretically visible over 50% of the time and occupying 31% of the field of view, including part of this over land. However based on its inspections at USI1 (albeit in poor visibility conditions), USI2 and USI3 the ExA notes that this would not be a dominant feature of the seascape which is already conditioned by Margate harbour and the vertical elements of its local infrastructure and the cliffs to the north of Pegwell Bay and therefore finds that the impact would be at the lower end of the range 'minor to moderate' claimed by DDC and should be considered in the planning balance.
- 5.4.66. As reported at para 5.4.47 above, the LVIA [APP-058] notes only one significant combined effect together with the offshore array, on walkers using the England Coastal Path at Sandwich Flats.
- 5.4.67. Additionally, the ExA notes that other than [RR-001] from Mr Ian Hide regarding visual impact in general terms (as discussed at para 5.5.34 below), no additional relevant concerns or objections about visual effects to receptors on the Thanet coast were raised by TDC or other IPs through the course of the Examination.
- 5.4.68. The design of the proposed onshore substation is subject to reserved optionality on the technology to be adopted for switchgear, which may be enclosed (gas-insulated) or open (air-insulated); this has a significant impact on massing. The LVIA has been carried out with a Rochdale Envelope whose maximum design parameters are considered by the LIR to be acceptable in planning terms. As noted at para 5.4.56 above, DDC has no further concerns in this regard. The ExA notes that the technology for the substation has not yet been selected and this would have an influence on the visual impact of the substation. However in view of the character and context of the substation site and adjacent land uses (which as observed on USI 3a and 3b [EV-040] and ASI1 [EV-010]) are primarily port, commercial, industrial and energy-related, the ExA considers on the Rochdale Envelope basis, the foreseeable effects from either of the alternative technology strategies presented in the application can be accommodated at the proposed substation site without any breach of policy in relation to landscape or visual effects.

## **Conclusion on Seascape, Landscape & Visual Effects**

5.4.69. This section sets out the ExA's overall conclusions in relation to seascape, landscape & visual effects. Taking all relevant evidence and policies into account, the ExA considers that the following should be considered in the planning balance.

- There are no significant seascape, landscape or visual effects from the Proposed Development to receptors on the Essex coast or the French or Belgian coasts.
- Onshore landscape or visual effects arising from the Proposed Development are not significant in EIA terms.
- On the Rochdale Envelope basis proposed there are no foreseeable adverse effects from either of the alternative technology strategies for the onshore substation as presented in the application.
- The LVIA assesses a significant combination effect of visibility of offshore WTGs and onshore substation to walkers on the England Coastal Path at Sandwich Flats, based on the Rochdale Envelope maximum design parameters for each part of the Proposed Development.
- The significant scale difference of proposed WTGs much larger than those of the existing TOWF, located on all sides of the existing array and with spacing and lines of orientation and symmetry that differ from the existing WTGs would produce an evident adverse visual effect when viewed from receptors and within sea views from the Thanet coast.
- Visual impact has been assessed as significant to receptors along the England Coastal Path and multiple viewpoints between Birchington on Sea (west of Margate) round the North Foreland to Dumpton Gap south of Broadstairs and the ExA concurs with this assessment.
- TEOWF would be visible partially over Ramsgate Harbour in the northern part of the view across Pegwell Bay from Sandwich Bay Estate and Sandwich Flats at about 20km range and the impact would be minor but significant. The introduction of the SEZ to the Proposed Development has the effect of marginally reducing the apparent lateral spread of the TEOW within views from certain viewpoints and so provides an element of mitigation, but the overall differential is negligible.
- The ExA concludes that there would be adverse landscape, seascape and visual effects arising from the proposed development but, because these are within the scope of such impacts contemplated as reasonable in NPS EN-1 and 3, they are policy compliant.
- It follows that, despite an adverse impact, this issue has a net neutral effect for the purposes of the planning balance.

## **5.5. HISTORIC ENVIRONMENT**

### **Introduction**

5.5.1. This section considers the effect of the Proposed Development on Archaeology and the setting of historic environment assets within:

- The onshore Historic Environment; and
- The offshore Historic Environment.

## **Policy Considerations**

- 5.5.2. In the Ancient Monuments and Archaeological Areas Act 1979 (as amended by the National Heritage Acts 1983 and 2002): a Monument is defined as: *'any building, structure or work above or below the surface of the land, any cave or excavation; any site comprising the remains of any such building, structure or work or any cave or excavation; and any site comprising or comprising the remains of any vehicle, vessel or aircraft or other movable structure or part thereof... (Section 61 (7)).'* Damage to an Ancient Monument is a criminal offence and any works taking place within one require Scheduled Monument Consent from the Secretary of State.
- 5.5.3. The Protection of Military Remains Act 1986 provides protection for the wreckage of military aircraft and designated military vessels. The Act provides for two types of protection: 'protected places' and 'controlled sites'. Under the Act it is an offence to disturb a 'protected place', or to remove anything from the site. Under the Act it is illegal to conduct any operations within a 'controlled site' that might disturb the remains unless licensed to do so by the Ministry of Defence.
- 5.5.4. NPS EN-1 paragraph 5.8.10 states that '[a]ny application should contain sufficient information to allow heritage significance to be understood.' Paragraph 5.8.12 provides that: '[t]he nature of the significance of the heritage assets and the value that they hold for this and future generations should be taken into account in considering the impact of a proposed development on any heritage assets.'
- 5.5.5. NPS EN-3 paragraph 2.6.144 addresses offshore historic effects. It asks the SoS to 'be satisfied that offshore wind farms and associated infrastructure have been designed sensitively taking into account known heritage assets and their status, for example features designated as Protected Wrecks.'
- 5.5.6. NPS EN-3 paragraph 2.6.143 refers back to generic policies in NPS EN-1 Section 5.8 for the consideration of effects on the historic environment which are located onshore. Visualisation is identified as a key means of testing and responding to effects on assets.
- 5.5.7. The Infrastructure Planning (Decisions) Regulations 2010 require 'decision-makers to have regard for the desirability of preserving: Scheduled monuments and their settings; and the character and appearance of conservation areas...'
- 5.5.8. Thanet Local Plan 2006 Saved Policies: Policy HE11 regarding assessment of the effects of a Proposed Development on archaeological remains and Policy HE12 regarding protection or recording of archaeological remains likely to be affected by development.

- 5.5.9. Canterbury City Council Local Plan (2006) saved policies; Canterbury City Council Local Plan Publication Draft 2014 (emerging policy) is only relevant to assessment of effects arising through change to setting of the scheduled monument at Reculver.

## **The Applicant's Case**

- 5.5.10. In response to ExA actions arising from ISH4, the Applicant submitted a statement [[REP3-005](#)] on the effects of the Proposed Development on specific heritage assets:
- Richborough Castle, Saxon Shore Fort;
  - Reculver Saxon Shore Fort and Anglo-Saxon Monastery; and
  - views towards the White Cliffs of Dover from the sea.
- 5.5.11. In this submission [[REP3-005](#)] regarding effects on the setting of the White Cliffs of Dover, the Applicant notes: *'The headland formed around South Foreland provides screening of the Offshore WTG Array in views from the closest section of the ferry route to the White Cliffs, approaching the Port of Dover. The Offshore WTG Array will not be visible from the section of the ferry route where the White Cliffs are most fully appreciated in the foreground at close proximity.'* The Applicant also points out that the TEOW can only be seen from the ferry at a range of 34-36km at its closest point, obliquely to the view of the White Cliffs and *'(T)he ES Rochdale Envelope layout was identified as partly extending the spread of WTGs towards the White Cliffs, while still appearing clearly offshore and not appearing to 'close off' the seascape space between the cliffs and TOWF.'*
- 5.5.12. The ES [[APP-063](#)] Onshore Historic Environment reports on potential effects of the Proposed Development on the historic significance and settings of Scheduled Ancient Monuments. No significant effect was predicted to occur as a result of the construction and operation of the Proposed Development to the Historic Significance of either heritage asset:
- Reculver: *'Due to the distance between the Reculver Saxon Shore Fort and Thanet Extension WTGs, it is considered that Thanet Extension WTGs will not cause any reduction in the contribution of setting to this asset's significance. The potential effects is considered to be Negligible in magnitude, the significance of the effect assessed as Not Significant, and no harm is identified.'*
  - Richborough Castle: *'The closest proposed WTGs to Richborough Castle would be located c. 20 km away and as such Thanet Extension WTGs would only appear (if weather conditions and intervening screening allow) as a very small and distant feature in a small number of glimpsed views...Due to the distance between Richborough Castle and Thanet Extension WTGs, and the presence of a broken horizon and screening features in views out to the WTGs, there is no potential for reduction in the contribution that the asset's setting makes to its significance. It is considered that Thanet Extension WTGs would lead to at worst a Negligible magnitude of change the effect of which would be Not Significant in terms of the EIA Regulations.'*



- Sandown Castle: 'The closest proposed WTGs to Sandown Castle is located c. 21 km away and as such Thanet Extension WTGs could potentially appear on clearer days as very small and distant features on the horizon. These WTGs would only be visible looking out from the asset and not in the same views of the asset from the shore... Visibility of Thanet Extension as a distant feature in some views to sea from the asset would not discernibly affect the asset's historic or architectural interest and would not in any way affect the significance of this asset. The potential magnitude of effect is considered to be Negligible, and the effect is assessed as Not Significant.'
- Dover Castle: 'The limited visibility of the proposed Thanet Extension WTGs would limit the magnitude of any change, meaning that the significance of Dover Castle would not be discernibly affected. There would be no visibility of Thanet Extension (either turbines or any other part of the proposed infrastructure) in views of Dover Castle from the approach to Dover Harbour by sea. Thanet Extension would have no effect on the significance of the Castle, an effect which is Not Significant and no harm is found.'

5.5.13. Visual impact assessments of the settings of these Scheduled Ancient Monuments were presented in the SLVIA [APP-053] Table 12.23, reviewed also in [REP3-005] where the Applicant notes that Historic England have accepted the appropriateness of the assessment methodology in the SoCG.

5.5.14. The ES [APP-063] Table 7.15: Summary of predicted impacts of Thanet Extension provides a summary of all potential significant effects to the onshore Historic Environment resulting from Thanet Extension. The Applicant notes: *'No effects considered significant for purposes of the EIA regulations have been identified, notwithstanding some changes in setting arising from the presence of the proposed Development. Only two instances of harm to the significance of heritage assets have been identified: these are effects on the character and appearance of the Clifftop Conservation Area and the Broadstairs Conservation Area arising from the visibility of the Thanet Extension WTGs across a part of those Areas. In the case of Clifftop Conservation Area the effect is confined to the northern extent of the Area and in the case of Broadstairs the effect is restricted to the eastern side of the Area (specifically in views from the southern side of that Area). In both cases, as the extent of the effect is limited, the degree of harm is considered to be "less than substantial". In all other cases, no harm has been found to the significance of any heritage asset, nor to the way in which that significance is appreciated and/or understood. The character and appearance of Conservation Areas is considered to be preserved, as are the settings of Listed Buildings.'*

5.5.15. In the Onshore Archaeology Outline Written Scheme of Investigation (WSI) [REP5-006] there is specific response to questions raised about the responsibilities in regard to the intertidal zone, which the Applicant explains would depend on the method selected for appropriate investigation techniques. If any method for investigation is carried out from *'...a barge or boat or involves divers, then this will be set out and detailed in a relevant method statement prepared as part of the Marine*

*WSI requirements. If the method is land based, such as watching brief at low tide, or test-pitting or trenching at the beach head, then this will be detailed in a site specific WSI falling under the remit of the process covered by this Onshore Outline WSI. Selection of investigative or mitigation techniques will be made in consultation with each team, and KCC and HE specialists and curators as appropriate.'*

- 5.5.16. In regard to Onshore Historic Environment, the Applicant notes in [[REP5-006](#)] that *'The proposed development site is located in a rich and diverse historic landscape that holds evidence for human activity from the earliest occupation of Britain to the present day...The coastline of Thanet has historically been characterised by extreme mobility. This process of coastal change has had a profound effect on human settlement and activity in this area...There are at least two major Roman military installations within the Stour Estuary; at Richborough Castle and at Ebbsfleet Hill. During the Saxon period, Thanet remained an important point of entry to England. The Stour remained navigable with major ports at Sandwich and Stonar flourishing until the gradual accretion of silts and gravels in the estuary precluded navigation towards the end of the medieval period. While it is unlikely that discrete archaeological 'sites' are present, the deposit sequences that would be investigated by the proposed SI works (subject to a separate WSI) have the potential to hold significant information that would inform understanding of the context of these wider developments.'*
- 5.5.17. A separate WSI for Site Investigation Works is in the Examination Library as [[REP1-047](#)].
- 5.5.18. The Applicant explains in [[REP5-006](#)] that: *'Modern development of the area has included the construction of the Richborough Power Station and other industrial development within the former Richborough Port site, the rapid expansion of the former hamlet of Cliffsend, and the construction of golf courses between Stonelees and Cliffsend. Landfill sites are recorded at Pegwell Bay and Stonelees Golf Centre (VWPL, 2018). This modern development is likely to have caused substantial but localised disturbance, and the presence of archaeological remains of potentially high significance is likely in areas that have not previously been disturbed (VWPL, 2018). Within the wider area, there are a number of designated heritage assets along the north and east Kent coast, many of which are of the highest significance, comprising mainly Grade I and II\* listed buildings, and scheduled monuments. These reflect the historic development of the area, and primarily relate to the interaction of the inhabitants of the area with the sea, whether for migration, fishing, trade, warfare or leisure (VWPL, 2018). Given the above, it is considered that a watching brief on ground investigation works could reveal surviving buried archaeological remains in previously undisturbed areas (i.e., those areas not previously subject to quarrying and landfill, or demolition activities such as at Richborough substation site and in and adjacent to the Country Park) and (together with analysis of the borehole/test pit logs) inform an understanding of the deposit sequence and contribute to better understanding of coastal formation processes in Pegwell Bay, and further understanding of the evolution of the Wantsum*

*Channel (VWPL, 2018). Undisturbed (or at least less disturbed) areas (within the redline Boundary) include Parcels 8, 13, 14 and possibly parts of Parcels 3, 4, and 5.'*

- 5.5.19. The Applicant notes in [REP5-006] that *'the ES identified four potential heritage assets, or groups of heritage assets, that may be present within the proposed cable route:*
- Elements of WWII anti-invasion defences;
  - Elements of the former WWI and WWII military supply base at Richborough Port;
  - Elements of the Boarded Groin, a medieval flood defence/sea wall; and
  - Deposits of geoarchaeological interest which could inform study of the changing coastline of the Thanet Coast and Wantsum Channel'.
- 5.5.20. [REP5-006] continues: *'Where elements of the WWII anti-invasion defences survive above-ground, they have been designated as a Grade II listed building (World War II anti-tank pimples and cylinders and associated pillbox at Pegwell Bay, NHLE 1413803)... an extensive group of features which extend over several hundred metres...along the sea wall in the nature reserve. It is likely that further remains of the anti-invasion defences survive, either concealed in the dense planting within the nature reserve, or below the ground surface...Irregular earthworks observed in the nature reserve may also reflect former military installations...There are no visible survivals of structures associated with Richborough Port within the proposed cable connection route. While buried elements of these features may survive, they are likely to comprise scattered and variously disturbed elements of building foundations or military discard which are of limited significance...The Boarded Groin was a sea defence/floodbank constructed during the 13th century to allow reclamation of land for grazing from the mouth of the Stour Estuary. The proposed cable connection crosses the line of the Boarded Groin within the area of the Country Park that was formerly landfill. It is not known whether the Boarded Groin survives below the landfill deposits, but it survives as a visible earthwork within St Augustine's Golf Course to the west of the proposed works and as a shallow bank within the nature reserve to the east of the proposed cable route...'*
- 5.5.21. The objectives of the Onshore WSI [REP5-006] are set out clearly in bullet form in 2.2 of that document, including:
- *'to fulfil the requirements of Historic England and Kent County Council in respect of archaeological monitoring and mitigation works associated with this project;*
  - *'to establish and confirm the extent and depth of previous quarrying and landfill operations along the proposed cable route;*
  - *'to establish, characterise and model the deposit sequence (where not disturbed by modern activity) along the onshore cable route, and to see how this differs from or relates to the offshore sequence;*
  - *'to ensure that any construction activities in areas determined to be of geoarchaeological, palaeoenvironmental or archaeological interest ...*

are subject to appropriate archaeological input, review, recording and sampling;

- 'to establish the presence (and characterise if found) the WWI and WWII defences;
- 'to determine whether remains related to the Board Groin may survive where intersected by the cable route, and characterise any such remains;
- 'to propose measures for the mitigation of unexpected archaeological and/or human remains encountered during further survey work or construction work associated with the project;
- 'to set out methodologies for post-construction monitoring; and
- 'to establish the reporting and archiving requirements for the archaeological works...'

5.5.22. The Offshore Archaeology Draft Written Scheme of Investigation (WSI) [REP4-021] identifies that the draft WSI covers the offshore elements of the current Thanet Extension project to the extent of Mean High Water Springs (MHWS) and the onshore elements of the scheme would be addressed in a separate WSI. This was subject to clarification following ExA question that there is managed overlap between the WSIs in the intertidal zone between MHWS and Mean Low Water. [REP4-021] states that *'Any works planned in the intertidal area should ensure that both onshore and offshore curators are consulted.'*

5.5.23. Selected notes from [REP4-021] include:

- 'there is potential for archaeological material of a prehistoric date to exist within the study area...' with '...potential to contain evidence of final Upper Palaeolithic and Mesolithic remains;
- '174 geophysical anomalies of potential archaeological interest were identified...None of these sites are designated...'
- '(T)here is potential for the presence of archaeological material of a maritime nature, spanning from the Mesolithic period to the present day...'
- 'there is potential for shipwrecks associated with the First and Second World Wars, including both naval and merchant ships...The study area is situated in an area of high navigational hazard, as assessed by Bournemouth University (Merrit et al., 2007), due to wide areas of mudflats and proximity to Goodwin Sands. These areas are considered to be of increased potential for further discoveries...'
- '(T)here is potential for 20th century aircraft remains in the array and OECC study areas, particularly in relation to the Second World War. There are 16 recorded losses of aircraft within the study area. All of these relate to generalised locations within the cable corridor, as their remains have not been confirmed on the seabed, their location is not presently known, and they could be discovered in the wider area. All 16 were in military service when they were lost, and therefore all would be protected under the Protection of Military Remains Act 1986 should their remains be discovered...'
- 'there is potential for material to relate to settlement and activity on the margins of the Wantsum Channel and remnant material from demolished Second World War features...'

- 5.5.24. [\[REP4-021\]](#) also clarifies that *'the "Cable Exclusion Area" on Figure 1 illustrates where no infrastructure will be installed. However, it remains part of the archaeological study area, as it has been retained within the Red Line Boundary for the purposes of anchor handling and other activities that could potentially impact the seabed.'* The ExA notes that this Cable Exclusion Area (referred to in the dDCO as 'Cable Exclusion Zone (CEZ)) is that in the approaches to Ramsgate Harbour and that the Structures Exclusion Zone of the WTG array area is included within the archaeological area.
- 5.5.25. [\[REP4-021\]](#) reports that in addition to building on the work undertaken for TOWF, new work undertaken for Thanet Extension comprised a Desk-Based Assessment that also included details of an intertidal walkover survey to confirm the location of an aircraft crash site; and an archaeological assessment by Wessex archaeology in 2018 of marine geophysical survey and geotechnical data acquired by Fugro in 2016; geophysical survey results from the Nemo Link offshore project have been incorporated.
- 5.5.26. A specific seabed feature from [\[REP4-021\]](#) is reported as: *'during the pre-disturbance UXO survey undertaken for the Nemo Link cable route, an area of possible aircraft material (reference NEMO\_Mag\_11081) was discovered (shown Figure 23)... It was identified as the possible remains of an aircraft component, possibly the wing, due to the construction...As there was potential for the material to relate to a military aircraft, which would therefore be protected under the Protection of Military Remains Act 1986, the archaeological report (Wessex Archaeology, 2017b) recommended the implementation of a temporary exclusion zone of 100m around the site.'*
- 5.5.27. The Offshore WSI [\[REP4-021\]](#) advises that: *'Best practice favours the preservation in situ of archaeological remains as the first option, and therefore the ideal mitigation is avoidance ...For Thanet Extension, impact to A1 geophysical anomalies will be avoided through the implementation of AEZs. All development and related activities that could impact the seabed are prohibited within the boundaries of an AEZ, therefore AEZs do not restrict remote survey work (eg vessels entering the zone to acquire geophysical datasets)... The final development layout will take into account the locations of all AEZs. All AEZs will be marked on the scheme masterplans. Although AEZs are fixed, provision should be made for them to be refined or removed (with agreement of the Archaeological Curator(s)), if required, subject to additional archaeological assessment of subsequent surveys that may be required...Should any previously unknown sites or material be encountered during development works, measures will be taken to reduce the level of impact. In order to provide for these unexpected discoveries, ORPAD (TCE and Wessex Archaeology, 2014) will be adopted. ORPAD is a system for reporting and investigating unexpected archaeological discoveries encountered during pre-construction, construction and post-construction activities.'*

## Planning Issues

- 5.5.28. LIRs have been received by the ExA from the following relevant local authorities:
- Kent County Council [[REP1-098](#)];
  - Dover District Council [[REP1-091](#)]; and
  - Thanet District Council [[REP1-128](#)].
- 5.5.29. The LIR from Kent County Council (KCC) [[REP1-098](#)] notes: *'The richness of the onshore historic environment is suitably described in the application documents of the DCO. The Onshore Historic Environment is considered in Volume 3 Chapter 7 of the Environmental Statement and is supported by Annex 7-1 Onshore Archaeology Desk-based Assessment... The onshore scheme is likely to have an impact on buried archaeological remains and the impacts will be addressed through the proposed written scheme of investigation that will be agreed between KCC and the applicant in due course... The present mitigation proposals promote a method of recording the antiinvasion remains (if found). It is KCC's view that, due to their significance, full consideration should be given to their preservation and adjustment to the cable route, if needed. This should be looked at during the detailed design stage of the onshore cable route... Other impacts can be addressed through a programme of archaeological investigation and recording.'*
- 5.5.30. The LIR from Kent County Council (KCC) [[REP1-098](#)] continues: *'Historic England has led on the archaeological effects of the offshore works for the application... KCC agrees with and welcomes the commitments made by the applicant to work collaboratively with stakeholders and to develop the following areas:*
- To agree, along with Historic England, an Archaeological Written Scheme of Investigation that includes agreement over Archaeological Exclusion Zones;
  - To undertake further sampling of cores from the array area and to agree further works that may be needed following a review of these;
  - To ensure that further specialist archaeological input will be included in designing any additional geotechnical or geophysical survey works; and
  - The implementation of the protocol set out in the 'Offshore Renewables Protocol for Archaeological Discoveries' (ORPAD) if previously unknown sites or deposits are encountered during construction or operational works.'
- 5.5.31. In the final SoCG between Kent CC (KCC) and the Applicant [[REP6-069](#)], KCC confirms its satisfaction with the adequacy of characterisation, assessment, management and/or mitigation measures in the Outline Onshore WSI, noting *'(T)here is some residual uncertainty on the presence of anti-invasion defences which will need to be established and where appropriate impacts avoided during the scheme.'*
- 5.5.32. In the final SoCG rev C [[REP6-069](#)] Kent CC confirmed that it is satisfied with the Onshore Archaeology Outline Written Scheme of Investigation

[[REP5-006](#)] and that the onshore Written Scheme of Investigation is adequately secured in the DCO. There were no outstanding matters remaining to be Agreed.

- 5.5.33. [[RR-047](#)] from Historic England includes the following statements: *'Historic England has had significant pre-application discussion with the applicant, providing comments on the Scoping and PEIR stage... We do however question the report's assessment of the harm to Margate's Conservation Area which has been assessed as negligible and the assessment of the relationship between the buildings within it to the sea... further geoarchaeological assessment should therefore be undertaken with the aim of contributing to an overall, integrated deposit model for the Wantsum Channel Area... Further assessment of the potential for 20th century anti-invasion defences at and buried archaeology relating to the possible Caesarian invasion site (both in Pegwell Bay), may also be necessary... The applicant is therefore encouraged to accurately address and consider the changing nature of the seabed, in relation to the total depth and width of the trenches required for the installation of the export cables, and in respect to the high potential for buried objects of archaeological interest.'*
- 5.5.34. In a final SoCG with the Applicant rev C [[REP6-007](#)] Historic England (HistE) confirmed its agreement to the assessed level of harm to the significance of the Margate Conservation Area by the wind turbines appearing over the top of the town (which HistE assess to be low rather than 'not significant' impact as stated in the ES), which is now agreed with the Applicant to be rated 'low' level of negative impact. HistE also noted that an addendum to the ES dated March 2019 *'...has been submitted to reflect this updated position, and we now agree with the level of harm assigned.'*
- 5.5.35. In addition, in the final SoCG rev C [[REP6-007](#)] Historic England (HistE) confirmed its agreement to *'...accept that the provision of embedded mitigation as summarised within Table 13.12, through a project archaeological reporting protocol and archaeological exclusion zones (AEZ) are a standard industry approach, however further specific schemes of investigation – such as those included within the Outline Offshore WSI provided – will be necessary to comprehensively account for the number, extent and positioning of AEZs. (see Written Representation comments 4.8 for reference for agreement on AEZs)... In the event of AEZs present seabed constraints to the development, and appropriate micro-siting is not possible, we consider the level of detail to mitigate impacts within the Outline WSI (with close reference to CIFA standards and codes) to be acceptable.'* HistE also confirmed in [[REP6-007](#)] that the Offshore Archaeology Outline Written Scheme of Investigation as amended [[REP4-021](#)] is considered appropriate with regard to monitoring and management principles particularly *'as we detailed within our written submission on 29th April 2019 (Examination Deadline 5) to the Examining Authority's second written question's we consider the provisions held within the offshore WSI sufficient to address cumulative effects, where the export cable corridor is spatially*

*constrained.*' There were no outstanding matters remaining to be Agreed in respect of Offshore Historic Environment.

- 5.5.36. Furthermore, in final SoCG rev C [[REP6-007](#)] Historic England (HistE) noted that *'the scheme's impact upon early Roman period archaeology and 20th century defences at Pegwell Bay is still uncertain; and that further assessment of the potential for, and impact upon, such remains is required. We agree that such further assessment has now been appropriately and adequately secured through the submission of an Onshore WSI, Appendix 2 to Deadline 5 Revision: Onshore Archaeology – Outline Written Scheme of Investigation, Revision D... through a programme of intrusive assessment, which should be carried out post-DCO determination.'* The Applicant concludes the SoCG that all offshore matters concerning Historic England *'are considered to be resolved'*.
- 5.5.37. The LIR from Dover District Council (DDC) [[REP1-091](#)] states: *'In respect of heritage assets within DDC, a robust methodology has identified the relevant designated heritage assets on which the proposal would have an impact. The assessment of the level of impact has identified minor effects in all cases with no mitigation required and DDC are in agreement with these conclusions...In respect of archaeology KCC Archaeology and Historic England are the relevant parties to respond on these matters and DDC would support their views on these aspects.'*
- 5.5.38. In the final SoCG rev B [[REP3-086](#)] signed by Dover DC it was confirmed that Onshore Heritage and Archaeology was one of the matters: *'...agreed as not forming areas of focus for DDC as they consider them adequately addressed and therefore no Statement of Common Ground is required'*.
- 5.5.39. The LIR from Thanet District Council [[REP1-128](#)] raised only two concerns in regard to onshore impacts on historic environment: impact due to proximity and scale of WTGs on coastal conservation areas; and potential impact on undiscovered archaeology for the final onshore cable alignment. It observed in regard to the first of these that Thanet's historic landscape has been sufficiently considered in the application and the ES conclusions of limited impact are justified; and in regard to the second of these that archaeological concerns would be adequately addressed by the Applicant's written scheme of investigation and which would be scrutinised by Kent County Council and Historic England.
- 5.5.40. With regard to the onshore historic environment impact of the Proposed Development, in the final SoCG rev B [[REP3-045](#)] Thanet DC agreed that the outcomes of the assessment are appropriate and accurately describe the likely impacts and *'the proposed management and mitigation as identified within the ES chapter are appropriate'*.

## **ExA Response**

- 5.5.41. The ExA has reviewed the effects of the Proposed Development and the proposed mitigation measures and security in relation to the historic environment both offshore and onshore.



- 5.5.42. In relation to the offshore environment, the ExA asked the Applicant in ExQ 2.10.3 [PD-015] for confirmation if consultations had taken place with the relevant authority over provisions in the WSI for compliance with obligations under the Protection of Military Remains Act 1986 should such arise during the Proposed Development. The Applicant responded at [REP5-002] that *'The Act covers as a protected place the remains of, or of a substantial part of, aircraft that crashed while in military service. As a precautionary principle, if the military service of an aircraft cannot be confirmed, then unknown aircraft material should also be reported and assumed to be of interest until proven otherwise...The Ministry of Defence, a key stakeholder, has been consulted, but no response has been received; although no engagement is expected at this stage, however, they will be consulted further on specific sites, should the need arise, in order to comply with the Protection of Military Remains Act 1986. Wessex Archaeology routinely liaises with the MoD with regards to shipwrecks and aircraft crash sites on other development projects and the approach here is consistent with those.'*
- 5.5.43. With regard to the Protection of Military Remains Act 1986 the ExA accepts that the Applicant has adequately put in place through the Offshore Archaeology Outline Written Scheme of Investigation suitable processes which are adequately secured in the DCO for definition of Archaeological Exclusion Zones (AEZs) to largely avoid likelihood of disturbance of military remains and procedures for additional investigation pre-construction and for consulting the MoD should the need arise.
- 5.5.44. The ExA notes the significance of the offshore Historic Environment (up to Mean High Water Springs) [para 5.5.23 above], notably in relation to geoarchaeology and archaeology from the Palaeolithic, Mesolithic, First and Second World War periods particularly as potentially affected by the OECC route in the vicinity of Goodwin Sands and in Pegwell Bay in the approach to the River Stour. The ExA accepts that the Applicant has adequately put in place through the Offshore Archaeology Outline Written Scheme of Investigation suitable processes for archaeological investigation and reporting which are adequately secured in the DCO including definition of Archaeological Exclusion Zones (AEZs) and following the ORPAD protocols.
- 5.5.45. The ExA is broadly content that elements of the offshore historic environment are appropriately identified and appropriate mitigation is secured through conditions from 26 in the Generation Assets DML (Sch 12 (now 11) of the dDCO) and from 24 of the Export Cable System DML (Sch 11 (now 10) of the Appendix D DCO). Appropriate construction supervision micro-siting is provided for.
- 5.5.46. The ExA recognises the significance of the onshore Historic Environment including the intertidal zone to Mean Low Water (para 5.5.16 above), notably in relation to geoarchaeology and archaeology from the Palaeolithic, Mesolithic, Roman, Saxon, mediaeval, First and Second World War periods particularly as potentially affected by the OECC route landfall at Pegwell Bay Country Park. The ExA notes the potential for

effects of site investigation construction and maintenance to archaeological remains, notably elements of WWII anti-invasion defences; elements of the former WWI and WWII military supply base at Richborough Port; elements of the Boarded Groin and deposits of geoarchaeological interest. The ExA accepts that the Applicant has adequately put in place suitable processes for archaeological investigation and reporting through the Onshore Archaeology Outline Written Scheme of Investigation (WSI) and the Onshore WSI for site investigation work which are adequately secured in the DCO.

- 5.5.47. The ExA acknowledges that all IPs accept that the draft/outline Written Scheme of Investigation for Onshore and Offshore Archaeology respectively both serve as adequate mitigation for the potential impact of the Proposed Development on Historic Environment (archaeology).
- 5.5.48. In relation to the onshore environment The Examining Authority (ExA) undertook USI1, on 30 October 2018, to inspect views from the scheduled monuments at Dover Castle and Richborough Fort [[EV-001](#)] and USI5, on the afternoon of 15 April 2019, to inspect views from the scheduled monument at Reculver [[EV-062](#)].
- 5.5.49. On the basis of these USIs, the ExA finds that the Applicant has adequately assessed potential effects of the Proposed Development on the historic significance and settings of Scheduled Ancient Monuments (para 5.5.12 above). The ExA accepts the assessment in the SLVIA as noted above that, although there would be inter-related visual effects and cultural heritage effects experienced at the historic environment asset locations identified in Table 12.31, they do not combine to create a greater significant effect.
- 5.5.50. The ExA notes the LIR [[REP1-091](#)] from Dover DC regarding potential impact of the Proposed Development on townscape, conservation areas and other onshore historic environment assets and their SoCG with the Applicant that concludes: *'...minor effects in all cases with no mitigation required and DDC are in agreement with these conclusions.'*
- 5.5.51. The ExA acknowledges the LIR [[REP1-128](#)] from Thanet DC regarding potential impact of the Proposed Development on townscape, conservation areas and other onshore historic environment assets (*'impact on designated heritage assets, particular the coastal conservation area...'*) and their SoCG with the Applicant that concludes: *'...that the impact on the overall character and significance of the heritage assets in the district (above ground) would be limited...the proposed management and mitigation as identified within the ES chapter are appropriate'*
- 5.5.52. The ExA is satisfied that SoCGs with all relevant IPs accept the characterisation and assessment of impact on the above-ground onshore Historic Environment, including the SoCG [[REP6-007](#)] between Historic England and the Applicant that concludes: *"...agreement to the assessed level of harm to the significance of the Margate Conservation Area by the wind turbines appearing over the top of the town ... to be rated 'low' level*

*rather than 'not significant'... we consider the level of detail to mitigate impacts within the Outline WSI (with close reference to CIFA standards and codes) to be acceptable)" and the SoCG between Kent CC (KCC) and the Applicant that KCC confirms its satisfaction with the adequacy of characterisation, assessment, management and/or mitigation measures for onshore archaeological investigation in the Outline WSI, noting '(T)here is some residual uncertainty on the presence of anti-invasion defences which will need to be established and where appropriate impacts avoided during the scheme.'*

5.5.53. The ExA recognises that the visual impact of the proposed WTGs has been assessed as significant to receptors including several conservation areas and heritage assets along the Thanet coast from Broadstairs to Margate but the ExA accepts the Applicant's assessment that effects arising from changes to the setting of historic environment assets are not significant in EIA terms, supported also by Historic England's position regarding Margate conservation area confirmed in SoCG [REP6-007].

5.5.54. The ExA also accepts the Applicant's case that although the visual effects and cultural heritage effects experienced at the locations identified in Table 12.31 of the SLVIA may be considered as inter-related effects, it is considered by the Applicant that they do not combine to create a greater significant effect, *'since visual effects and cultural heritage effects arising are distinct effects on different receptors, with visual effects arising on views experienced by people and cultural heritage effects arising from changes in the setting of the historic environment asset.'*

## **Conclusion on the Historic Environment**

5.5.55. This section sets out the ExA's overall conclusions in relation to the historic environment. Taking all relevant evidence and policies into account, the ExA considers that the following should be considered in the planning balance.

- The effects of the Proposed Development on both the onshore historic environment and the offshore historic environment have been appropriately identified and adequate mitigation is secured through processes for archaeological investigation and reporting described in the Archaeology Outline Written Schemes of Investigation which are adequately secured in the DCO.
- The effects of the Proposed Development on the setting of onshore historic environment assets above ground are assessed as not significant in EIA terms and the ExA agrees this to be the case, acknowledging that Historic England (HistE) have assessed a 'low' level of harm to the significance of the Margate Conservation Area as a consequence of the WTGs appearing above townscape when viewed from land.
- This issue makes a minor negative contribution to the planning balance.

## 5.6. CONSTRUCTION

### Introduction

5.6.1. This section considers the effects of construction of the Proposed Development on the following matters.

- Access and traffic management;
- Debris and waste management onshore; and
- Contaminated land and groundwater issues onshore.
- Construction-related noise and vibration onshore and offshore

### Policy Considerations

5.6.2. NPS EN-3 paragraph 2.6.189 identifies the potential for construction of an OWF to give rise to extensive physical effects including effects on waves and tides, scour, sediment transport, turbidity and water quality effects. Paragraphs 2.6.193-4 expect the Applicant to identify and mitigate such effects. Paragraph 2.6.196 requires the SoS to *'be satisfied that the methods of construction, including use of materials, are such as to reasonably minimise the potential for impact on the physical environment.'*

5.6.3. NPS EN-3 paragraphs 2.6.44-5 favour a flexible approach to OWF construction, enabling the micro-siting of structures to address seabed and ground conditions, and the mitigation of impacts identified in detailed pre-construction surveys. NPS EN-3 paragraph 2.6.51 supports the development of and security for a construction monitoring programme.

5.6.4. In regard to control of risks involving Contaminated Land and Groundwater the following legislation and guidance applies:

- Environmental Protection (Duty of Care) Regulations 1991;
- Water Resources Act 1991;
- Hazardous Waste Regulations 2005;
- The Control of Pollution (Oil Storage) Regulations 2001;
- Groundwater Regulations 1998; and
- Water Framework Directive 2000.
- Defra & Environment Agency (2016) Guidance 'Pollution prevention for businesses'.

5.6.5. Relevant legislation and guidance regarding waste includes:

- Environmental Protection Act 1990;
- The Controlled Waste (England and Wales) Regulations 2012;
- Hazardous Waste (England and Wales) (Amendment) Regulations 2009;
- Hazardous Waste (England and Wales) Regulations 2005;
- Clean Neighbourhoods and Environment Act 2005;
- Landfill Regulations 2002;
- List of Wastes (England) Regulations 2005;
- CL:AIRE Definition of Waste: Development Industry Code of Practice.

5.6.6. Construction Noise and Vibration Management is governed by the following legislation and standards:

- Environmental Protection Act 1990;
- Control of Pollution Act 1974; and
- Noise and Statutory Nuisance Act 1993.
- BS5228 - Code of Practice for Noise and Vibration Control on Construction and Open Sites - Part 1: Noise and Part 2: Vibration.

### **The Applicant's Case**

5.6.7. The Applicant in [[APP-133](#)] ES Chapter 8.1 Code of Construction Practice (referring to itself as VWPL) states:

- 'VWPL and its contractors fully understand their duties under health and safety legislation including the Health and Safety at Work etc Act 1974, the Construction (Design and Management) Regulation 2015 (CDM 2015) and the Management of Health and Safety at Work Regulations 1999. VWPL understand their obligations and will assess the competence of all potential contractors to ensure they have the relevant skills, experience and training to be able to meet the requirements of these regulations...
- 'VWPL and its contractors are committed to protecting employees, other contractors and third parties (including visitors and the general public) from ill health, injury or harm arising from construction of the onshore works and appropriate management controls will be developed to manage and control risk, provide safe systems of works and reduce the consequences of failures and harm to people. Exposure to contaminants would be mitigated by the Control of Substances Hazardous to Health (COSHH) Regulations 2002 and the Management of Health and Safety at Work Regulations 1999, and controlled through good construction practices such as site induction, good hygiene practices, dust suppression (especially in loading/unloading bays and tracks), requirement for Personal Protective Equipment (PPE) suitable to prevent exposure and/ or restricted access during higher risk activities...
- 'Measures contained in relevant Department of the Environment, Food and Rural Affairs (DEFRA) and Environment Agency (EA) best practice guidance on the control and removal of invasive weed species will be implemented...
- 'All flood risk management agreed mitigation measures, including those to ensure the requirements of the Water Framework Directive (WFD) are achieved, and will be implemented...'

5.6.8. The CoCP is a certified document. Requirements 21, 24, 25 and 26 of the Appendix D DCO ensure that the onshore Construction Environmental Management Plan (CEMP) and individual construction mitigation plans for traffic, noise, vibration and water effects are prepared in accordance with it.

5.6.9. In [[APP-133](#)] ES Chapter 8.1 Code of Construction Practice the Applicant also states: '*Excavated materials to be re-used on-site would be controlled in accordance with the CL:AIRE Definition of Waste:*

*Development Industry Code of Practice (version 2), as appropriate, as an alternative to environmental permits or waste exemptions...'*

5.6.10. [APP-133] ES Chapter 8.1 Code of Construction Practice also states: *'All relevant legislation regarding waste is to be followed including, but not limited to:*

- *'Clean Neighbourhoods and Environment Act 2005 introduces additional noise, litter and waste controls including site waste management plans;*
- *'The Controlled Waste (England and Wales) Regulations 2012;*
- *'Environmental Protection Act 1990 defines the legal framework for duty of care for waste, contaminated land and statutory nuisance;*
- *'Hazardous Waste (England and Wales) Regulations 2005;*
- *'Hazardous Waste (England and Wales) (Amendment) Regulations 2009;*
- *'List of Wastes (England) Regulations 2005 SI;*
- *'Landfill Regulations 2002'.*

The CEMP is required to confirm with the CoCP under dDCO requirement 21.

5.6.11. In regard to control of risks involving contaminated land and groundwater [APP-133] the Applicant states: *'Where applicable, the following legislation will be adhered to on site to reduce the risk of contamination:*

- *'Environmental Protection (Duty of Care) Regulations 1991;*
- *'Water Resources Act 1991;*
- *'Hazardous Waste Regulations 2005;*
- *'The Control of Pollution (Oil Storage) Regulations 2001;*
- *'Groundwater Regulations 1998; and*
- *'Water Framework Directive 2000.*
- *'The necessary prevention techniques outlined in Defra & Environment Agency (2016) Guidance 'Pollution prevention for businesses' will be followed on site to prevent pollution.'*

A Contaminated Land and Groundwater Plan (CLGP) is proposed to be secured under requirement 24 in the dDCO. Specific controls for the substation site in construction are also provided through the Onshore Substation Surface Water and Drainage Management Plan under requirement 23.

5.6.12. In regard to control of Construction Noise and Vibration Management, in [APP-133] the Applicant states: *'Key control measures will be derived from the following legislation/standards:*

- *'BS5228 - 'Code of Practice for Noise and Vibration Control on Construction and Open Sites' - Part 1: Noise and Part 2: Vibration;*
- *'Environmental Protection Act 1990;*
- *'Control of Pollution Act 1974; and*
- *'Noise and Statutory Nuisance Act 1993.'*

A Construction Noise and Vibration Management Plan (CNVMP) is proposed to be secured under requirement 25 in the dDCO.

- 5.6.13. In regard to construction traffic management, in [APP-133] the Applicant notes that a Construction Traffic Management Plan (CTMP) is secured through the DCO (requirement 26) and would be subject to consultation and approval prior to construction. Included within the CTMP, temporary traffic management would be provided *'on approaches to accesses in the form of traffic warning signs, possible reductions in speed limit signs to ensure safe passage of vehicles. All signage in accordance with the relevant Department for Transport traffic signs guidance e.g. chapter 8 (2009)'*; and that Proposed Development access locations would be designed in accordance with Design Manual for Roads and Bridges (1995).

## **Planning Issues**

- 5.6.14. The LIR [REP1-128] from Thanet DC confirms that the assessment methodology in the ES has *'taken into account current and relevant Air Quality (AQ) guidance. It is accepted that, construction, operational and cumulative effects and impacts are negligible at human receptors'* and that predicted construction traffic flows are below the criteria requiring an AQ assessment; the LIR also notes that temporary dust emissions during construction would be mitigated by CoCP measures *'to achieve best practicable means.'*
- 5.6.15. The Thanet DC LIR also notes that Construction works have been identified as having potentially significant noise impacts to residential properties in Ebbsfleet and accepts the mitigation proposed within the Code of Construction Practice (CoCP) and Construction Noise and Vibration Management Plan (CNVMP).
- 5.6.16. The final SoCG rev B [REP3-045] Thanet DC agreed that *'the proposed management and mitigation as identified within the ES chapter are appropriate and the relevant Construction Environmental Management Plan principles (with regards noise and vibration management) have been provided within the Code of Construction Practice.'* At para 29 the SoCG notes matters raised by TDC during the pre-application consultation that have yet to be resolved and are subject to ongoing discussion as of the last consultation meeting held with TDC. It is noted that within TDC's relevant representation *'...the Council raises concern at this stage over the short-term construction and long-term operational impacts from noise from the substation at night on residential receptors in Ebbsfleet.'*
- 5.6.17. In the final SoCG rev B [REP3-045] with Thanet DC there was no report of concerns about Traffic and Access, or Debris and waste management onshore. The SoCG reports agreement that *'...the proposed management and mitigation measures, including a Contaminated Groundwater and Land Plan, have been adequately secured within the draft DCO. Furthermore, these plans will require the relevant authorities, including TDC, to approve the final plans following the detailed design phase/postconsent (if granted).'*

- 5.6.18. The final SoCG rev B [[REP3-045](#)] with Thanet DC agrees that the assessment of effects on air quality and proposed management and mitigation are considered appropriate and the relevant Construction Environment Plan principles have been provided in the CoCP.
- 5.6.19. The DDC LIR [[REP1-091](#)] identifies (in section 3.5) that there would be significant construction effects onshore, in relation to the passage of the cable corridor through Pegwell Bay Country Park. It views this impact as adequately mitigated and acceptable in policy terms *'if the development is found to be acceptable in all other regards'* (paragraph 3.5.3).
- 5.6.20. The LIR [[REP1-091](#)] from Dover District Council (DDC) confirms no concerns in relation to air quality subject to compliance with the Code of Construction Practice (CoCP) submitted by the Applicant and it accepts the methodology submitted therein. DDC also confirms no concerns in respect of waste, noise and vibration effects subject to mitigation measures proposed in the CoCP being fully complied with.
- 5.6.21. In regard to the Construction impact of the Proposed Development, in the final SoCG rev B [[REP3-086](#)] signed by Dover DC there was no concern about waste management onshore and it was expressly confirmed that: *'The following matters were agreed as not forming areas of focus for DDC as they consider them adequately addressed and therefore no Statement of Common Ground is required'*:
- 'Traffic and Transport;
  - 'Air Quality;
  - 'Noise and Vibration;
  - 'Ground Conditions, Land Use and Flood Risk'.
- 5.6.22. The KCC LIR [[REP1-098](#)] highlights that, notwithstanding the removal of Landfall Option 2 (surface installation with a berm), the cable construction phase would be significantly disruptive to movement through Pegwell Bay Country Park (paragraph 2.1.3-4). In terms of highway impact, KCC as local highway authority is content with the construction effects on the network (paragraph 2.2.3-4) and on Sustrans Regional Cycle Route 15 (paragraph 2.4.2). KCC notes that the Thanet Coast Path would be obstructed by construction works (paragraphs 2.5.1-2) but considers that mitigation is adequate.
- 5.6.23. The LIR [[REP1-098](#)] from Kent County Council (KCC) notes the impact of construction traffic crossing the Sustrans Regional Cycle Route 15 at Pegwell Bay Country park and welcomes the Access management Strategy to keep it open at *'all times, except when vehicle crossings are necessary'* and that *'any new construction should not reduce the user's viewpoints or safety when using the cycle route'*. Noting that the Coast Path would be obstructed during construction of the cable landfall, KCC requires the Applicant to work closely with the KCC PRow officer to allow access across the park during construction.
- 5.6.24. The KCC LIR [[REP1-098](#)] also notes that Environmental Permits obtained in connection with this project must remain *'the sole liability of the applicant'* and would not later become incumbent on the County Council.



- 5.6.25. In the final SoCG rev C [[REP6-069](#)] Kent CC confirmed: '*(T)he proposed site access points have been agreed in principle but will require the submission of full details to be agreed with the Highway Authority. The principles of traffic management and mitigation during construction are acceptable but details will need to be agreed through submission of the Construction Traffic Management Plan... The principles for traffic management are adequately outlined in the Code of Construction Practice (Application Ref 8.1) and are adequately secured within the DCO.*'
- 5.6.26. The TDC LIR [[REP1-128](#)] broadly accepts that whilst there would be adverse construction effects, that these have been adequately identified and that there is security for all relevant mitigation. All three local authorities placed strong emphasis on the Applicant's provision of and adherence to the Construction Environmental Management Plan (CEMP), Code of Construction Practice (CoCP) and other relevant management plans. No breaches of local plan policy were identified.
- 5.6.27. In the final SoCG rev C [[REP6-069](#)] Kent CC also confirmed that: '*...the methods of assessment for ground conditions are appropriate in document 6.3.6...KCC's primary objective with regard to the Closed Landfill element is to ensure, as far as is reasonably practical, that there is no construction or in-situ testing which is likely to open up pathways for landfill gas, leachate (ground water contamination) or surface water sources to escape the site. One method of achieving this, where practical, is to employ horizontal drilling. The other main area of interest remains with the detail around the cable landfall, and to be satisfied that the arrangements will not permit "sea-water" to enter the substructure of the site, or to allow any leachates contained in the body of the landfill to escape to sea... KCC are satisfied that the mitigation proposed is adequately secured with the DCO. KCC and the applicant are still working on the SI works and mitigation of Pegwell Bay Country Park.*' In concluding the SoCG, the Applicant notes that KCC seek '*engagement with the Applicant throughout the Site Investigation works and construction works as these will have an impact on the Pegwell Bay Country Park*'.

## **ExA Response**

- 5.6.28. In general terms, the ExA notes a strong secured relationship between the CoCP (a certified document), the CEMP and individual construction impact migration plans for traffic, noise, vibration and water required by dDCO requirements 21, 24, 25 and 26. The construction effects of the Proposed Development are well managed.
- 5.6.29. The ExA is satisfied that the mitigation proposed for risk of flow of leachate or sea water at the cable landfall is adequately secured by the Contaminated Groundwater and Land Plan and the DCO in requirement 24.
- 5.6.30. The ExA is satisfied that mitigation proposed for risk of effects from construction debris and waste onshore is adequately secured by the Code

of Construction Practice and the onshore CEMP provided for under dDCO requirement 21.

- 5.6.31. The ExA is satisfied that mitigation of any construction traffic management impacts is secured by the Construction Management Plan and dDCO requirement 26.
- 5.6.32. The ExA notes that the following would be required by the Applicant under the Road Traffic Regulation Act 1984:
- Notice of Street Works to KCC under the Traffic Management Act 2004 ('booking' time on affected highways prior to authorised works affecting the highway).
  - Abnormal loads permit from the relevant highway authority (HA, KCC, street authority etc) under the Road Vehicles (Authorisation of Special Types) (General) Order 2003 and the Road Traffic Act 1988
  - Temporary Traffic Regulation Order (TRO) from Kent County Council.
- 5.6.33. There is one issue of outstanding concern in the Thanet DC SoCG over noise impact during construction and operations to residential properties at Ebbsfleet, opposite the access point to the proposed construction works compound in the Bay Point Sports Club. The ExA inspected this proposed access point at USI3 [EV-040] and ASI1 [EV-010] from both sides of the Sports Club boundary and recognises a likely minor adverse effect during construction and finds that it is likely to be of short duration. The Construction Noise and Vibration Management Plan (CNVMP) (requirement 25) and the Construction Traffic Management Plan (CTMP) (requirement 26) provided for in the dDCO enable reasonable mitigation to be provided and secured to the satisfaction of the relevant LPA and highway authority.
- 5.6.34. In this respect the ExA notes from its site inspection to Ebbsfleet (USI 3a and 3b [EV-040]) and to the port and energy park operations (ASI1 [EV-010]) that construction noise effects on residential receptors from the proposed substation site are likely to be perceived in a background context which already includes noise from other commercial and industrial activity from the Port of Richborough and Richborough Energy Park as well as from baseline road noise. Mitigation measures would address the construction effects within that context.

## **Conclusion on Construction**

- 5.6.35. This section sets out the ExA's overall conclusions in relation to construction. Taking all relevant evidence and policies into account, the ExA has found as follows.
- Noise impact from construction access to the Baypoint Sports Club site to residential receptors at Ebbsfleet is likely to be of minor adverse effect.
  - Significant construction disruption to Pegwell Bay Country Park, Regional Cycle Route 15, the coastal path and to users of these facilities must be acknowledged as an adverse effect, but local

- authorities view this as acceptable and sufficiently mitigated if the Proposed Development is more broadly supported in policy terms;
- There are no other contentious matters outstanding regarding impact from onshore construction of the Proposed Development;
  - Relevant policy is generally complied with; and
  - This issue is a neutral consideration in the planning balance.

## **5.7. NOISE & OTHER PUBLIC HEALTH EFFECTS**

### **Introduction**

5.7.1. This section considers the effect of the Proposed Development on Public Health during construction, operation and maintenance and decommissioning phases in the following aspects:

- noise and vibration impact on human receptors from onshore and offshore development;
- air quality;
- water and soil emissions from landfill; and
- access to green space.

Electromagnetic radiation exposure (EMF) is separately considered in section 5.11 below.

### **Policy Considerations**

5.7.2. NPS EN-1 section 4.13 notes that direct impacts on health from energy projects that need to be considered in determining NSIP applications may include increased traffic, air or water pollution, dust, hazardous waste and substances and noise.

5.7.3. NPS EN-1 section 5.11 states: 'the Government's policy on noise is set out in the Noise Policy Statement for England (NPSE)...[o]perational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance...[t]he project should demonstrate good design through selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and, where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission...[t]he Secretary of State (SoS) should not grant development consent unless it is satisfied that the proposals will meet the following aims:

- avoid significant adverse impacts on health and quality of life from noise;
- mitigate and minimise other adverse impacts on health and quality of life from noise;'

5.7.4. BS 5228-1-2009 (+A1: 2014), Code of practice for noise and vibration control on construction and open sites, is a relevant document.

- 5.7.5. DEFRA (2010), NPSE requires that noise and vibration assessments identify impacts that would result in significant adverse impacts on health and quality of life from a Proposed Development.
- 5.7.6. The Control of Pollution Act 1974 gives the Local Authority powers to serve a notice to the developer requiring the control of site noise under Section 60 of the Act.
- 5.7.7. EIA Regulations 2017 Part 1.4 (2)(a) requires identification and assessment of the direct and indirect significant effects of the Proposed Development on population and human health *inter alia*.
- 5.7.8. Other relevant local policy includes the Air Quality Technical Planning Guidance (2016), which has been agreed by Thanet District Council and is used as informal planning guidance in development management, with the guidance to be adopted as part of the new local plan in 2019.
- 5.7.9. No other local plan policy considerations regarding noise or other public health effects were cited by Kent CC, Thanet DC or Dover DC in RRs, LIRs or during the Examination.

### **The Applicant's Case**

- 5.7.10. NPS EN-1 Para 4.13 is addressed by ES Chapter 12 section 12.10, 12.11, 12.12, 12.13 and as noted in Table 12.3 of ES Chapter 12.
- 5.7.11. The temporary loss of access to green space during construction across Pegwell Bay Country Park, Stonelees Nature Reserve and the BayPoint Sports Club is assessed in ES Chapter 4: Tourism and Recreation as Minor Adverse and not significant in EIA terms as mitigated in the proposed DCO.
- 5.7.12. Impacts on public health due to noise and vibration effects during the onshore substation construction and during O&M to residential receptors at Ebbsfleet lane, Ramsgate Road and Baypoint Club were assessed in the ES Chapter 10 [[APP-066](#)] as Minor Adverse and agreed in a SoCG with Thanet DC, as follows:
- from onshore construction, in ES 10.10.20 and following paragraphs;
  - from offshore construction piling at 10.10.42;
  - from onshore construction traffic noise at 10.10.47;
  - from onshore substation operational phase at 10.11.1 and following paras and 10.16.2
- 5.7.13. ES para 10.4.12 notes that significant effects from noise and vibration '*are considered unlikely at PRow, public open spaces and sports recreational facilities during either construction or O&M.*' 10.4.13 notes that an operational noise effect from offshore WTGs to onshore noise sensitive receptors would be negligible.
- 5.7.14. Impacts on public health due to air emissions and air quality effects during construction and during O&M have been assessed in the ES as Negligible Adverse and agreed in a SoCG with Thanet DC.

- 5.7.15. EIA Regulations 2017 Part 1.4 (2)(a) requiring identification and assessment of the direct and indirect significant effects of the Proposed Development on population and human health is addressed by ES Chapter 12 section 12.4 and as noted in Table 12.3 of [APP-068] ES Chapter 12.
- 5.7.16. [APP-068] ES Chapter 12 para 12.4.2 notes that electromagnetic radiation during operation is not assessed in a dedicated ES chapter but is assessed within chapter 12 *'with respect to the study area encompassing the onshore cable route which is described in section: 12.7 and in detail in Volume 3, Chapter 1: Project Description – Onshore (Document Ref: 6.3.1). In summary the potential impact is restricted to a very localised study area <5m of the export cable'*. The effects are non-existent during construction and assessed as Minor Adverse during O&M and not significant in EIA terms. This topic is reported in greater detail at section 5.11 below.

## Planning Issues

- 5.7.17. The LIR from Kent CC [REP1-098] notes that *'[a]ny incursions into the landfill site or breaches of the sea wall (which would be required for options 1 and 3) will need to be engineered to consider the historic potential environmental difficulties associated with this site. In particular, this would include ensuring that no new pathways for the migration of landfill gas or leachate are created...It is also advised that any Environmental Permits obtained in connection with this project will need to be the sole liability of the applicant and that none will be transferred to, or later by default become incumbent on, the County Council.'* In the final SoCG rev C [REP6-069] Kent CC confirmed that it is satisfied that the mitigation proposed in this regard is adequately secured with the DCO subject to ongoing liaison regarding the outcome of Site Investigation works in informing necessary mitigation of Pegwell Bay Country Park.
- 5.7.18. The LIR [REP1-128] from Thanet DC confirms that the assessment methodology in the ES has *'taken into account current and relevant Air Quality (AQ) guidance. It is accepted that, construction, operational and cumulative effects and impacts are negligible at human receptors'* and that predicted construction traffic flows are below the criteria requiring an AQ assessment; the LIR also notes that temporary dust emissions during construction would be mitigated by CoCP measures *'to achieve best practicable means.'*
- 5.7.19. The Thanet DC LIR notes in the context of night time operational noise from transformers there are *'8 residential properties (LT4 - Ebbsfleet Lane) that although 530m away to the proposed substation have the potential to be impacted by noise.'* TDC requires the final substation design to include suitable enclosure or screening of transformers and that an Operational Noise Management Plan for the substation as stipulated in the draft DCO must be submitted for approval by the Local Planning Authority *'...sufficient to be able to ensure appropriate mitigation is in place'*.

- 5.7.20. The Thanet DC LIR notes that the 'potential for contamination of groundwater and impact on human health during construction stage of the on-shore development is the primary concern' and that this has been reflected in the embedded mitigation proposed, but the Contaminated Land and Groundwater Plan (CLGP) may require updating following the Site Investigation works to clarify the indicative mitigation measures in the CoCP, but this is a normal process that would take place in the light of pre construction site investigations prior to the finalisation of the CLGP.
- 5.7.21. In response to the ExA Written Question 1.18.5: '[a]re the councils and the Environment Agency satisfied that the proposed design and mitigation measures would avoid a significant risk to public health in terms of contaminated land and potential impacts on controlled waters' the Environment Agency (EA) confirmed that risks to controlled waters can be managed by appropriate engineering controls and that public health risk is a matter for TDC. EA also confirmed that, in relation to any disturbance of landfill materials and the Code of Construction Practice, mitigation measures must be agreed with the Environment Agency prior to works commencing. TDC replied that: DCO Requirement 19 '*requires submission of contemporary intrusive site investigation data, which will inform appropriate remediation and mitigation measures along the cable route.*' DDC replied that they '*would refer [sic] to the Environment Agency and Thanet District Council as the statutory authorities in that location unless the survey results identified a need for DDC's input.*'
- 5.7.22. The final SoCG rev B [[REP3-045](#)] with Thanet DC agrees that the assessment of effects on air quality and proposed management and mitigation are considered appropriate and the relevant Construction Environment Plan principles have been provided in the CoCP.
- 5.7.23. The final SoCG rev B [[REP3-045](#)] with Thanet DC reports agreement that '*...the proposed management and mitigation measures, including a Contaminated Groundwater and Land Plan, have been adequately secured within the draft DCO. Furthermore, these plans will require the relevant authorities, including TDC, to approve the final plans following the detailed design phase/ postconsent (if granted).*'
- 5.7.24. The final SoCG rev B [[REP3-045](#)] para 29 Thanet DC notes ongoing concern over '*...the short-term construction and long-term operational impacts from noise from the substation at night on residential receptors in Ebbsfleet.*'
- 5.7.25. The LIR [[REP1-091](#)] from Dover District Council (DDC) confirms no concerns in relation to air quality subject to compliance with the Code of Construction Practice (CoCP) submitted by the Applicant and it accepts the methodology submitted therein. DDC also confirms no concerns in respect of noise and vibration effects subject to mitigation measures proposed in the CoCP being fully complied with.
- 5.7.26. In the final SoCG rev B [[REP3-086](#)] signed by Dover DC there was no concern about waste management onshore and it was expressly

confirmed that: *'The following matters were agreed as not forming areas of focus for DDC as they consider them adequately addressed and therefore no Statement of Common Ground is required':*

- 'Traffic and Transport;
- 'Air Quality;
- 'Noise and Vibration;
- 'Ground Conditions, Land Use and Flood Risk'.

5.7.27. In Relevant Representation [[RR-055](#)], Public Health England states that it is satisfied that it does not believe that the Proposed Development poses a significant risk to public health in terms of air quality impacts arising from either the construction and operational phases of the development; and that subject to both the LA and EA being satisfied with the proposed design and mitigation measures it is satisfied that contaminated land issues can be adequately managed such that the development should not pose a significant risk to public health; and also that the project would not pose a significant risk to public health in terms of the potential impact of electric and magnetic fields (as described in greater detail at 5.11 below).

5.7.28. There were no representations during the Examination in regard to noise impact to human receptors from offshore development.

### **ExA Response**

5.7.29. The ExA notes that SoCGs with local authorities have agreed that noise and vibration effects on human receptors are assessed as Minor Adverse and air emissions and air quality effects on public health as Negligible Adverse and therefore no Public Health effect is significant in EIA terms.

5.7.30. Traffic impact onshore would be confined to construction phase. The ExA notes the LIR from Thanet DC that predicted construction traffic flows are below the criteria requiring an Air Quality assessment.

5.7.31. The ExA agrees with the assessment of loss of public access to green space to be Minor Adverse at most, very temporary in duration and capable of being mitigated adequately by the proposed DCO.

5.7.32. The ExA notes the lack in general of outstanding concerns from Local and Statutory Authorities about other Public Health effects of the Proposed Development (subject to compliance with the CoCP) but there is one issue of outstanding concern in the Thanet DC final SoCG [[REP3-045](#)] over noise impact to residential properties at Ebbsfleet from substation transformers during operations at night. The ExA considers that these noise effects, subject to appropriate screening or enclosure of transformers and agreement with the local Authority as provided for in the DCO at requirement 31, are likely to be not significant in the context of other existing industrial sites in the vicinity, including most notably the commercial and industrial activities on the balance of the Port of Richborough land and the Richborough Energy Park adjacent.

5.7.33. Thanet DC sought an amendment to the DCO to reflect the potential for the CLGP to be updated following site investigation. The ExA is content that the CoCP, informed by the outcomes from secured pre-construction site investigation works that are themselves subject to a stage CLGP, would lead to the preparation of a construction stage CLGP that would appropriately manage any matters of concern with appropriate construction mitigation measures. The EA would be consulted and the appropriate LPA (TDC in this instance) would approve the pre-construction and the construction stage CLGP under requirement 24.

## **Conclusion on Noise & Other Public Health Effects**

5.7.34. This section sets out the ExA's overall conclusions in relation to noise and other public health effects. Taking all relevant evidence and policies into account, the ExA has found as follows.

- Operational noise and other public health effects of the Proposed Development to human receptors are at most minor adverse and not significant in EIA terms.
- Secured monitoring and mitigation measures are adequate.
- Relevant policy is complied with.
- This issue is a neutral consideration in the planning balance.

## **5.8. MARINE AND COASTAL PHYSICAL PROCESSES**

### **Introduction**

5.8.1. This section considers the effect of the Proposed Development on marine and coastal physical processes.

### **Policy Considerations**

5.8.2. NPS EN-3 sets out the potential impacts of offshore renewable energy projects on marine and coastal physical processes. It states<sup>164</sup> that the methods of construction, including use of materials, for these projects should reasonably minimise the potential for impacts on the subtidal physical environment such as scouring and sediment transport. NPS EN-3 also specifically requires applicants to assess the effects of installing cables across the intertidal zone<sup>165</sup>.

5.8.3. Section 4.8 of NPS EN-1 stipulates that applicants should consider the impacts of climate change when planning the location, design, build, operation and decommissioning of new energy infrastructure, for example in relation to sea level rise. Section 5.5 of NPS EN-1 sets out the Government's aim to ensure that coastal communities continue to prosper and adapt to coastal change.

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<sup>164</sup> Paragraphs 2.6.196 and 2.6.113 of NPS EN-3.

<sup>165</sup> Paragraph 2.6.81 of NPS EN-3.



- 5.8.4. 5.8.4. The MPS also highlights the potential for direct and indirect effects of new infrastructure on seabed geomorphology and the coastline, for example through changes to the supply of sediment. The MPS also seeks to protect sea-floor ecosystems, including through the network of Marine Protected Areas such as MCZs. This matter is dealt with at Section 5.3 of this Report.
- 5.8.5. None of the submitted LIRs [[REP1-091](#), [REP1-098](#), [REP1-128](#)] identified any development plan policies considered to be important and relevant to the topic of marine and coastal physical processes.

## The Applicant's Case

- 5.8.6. The Applicant's assessment of the potential effects on marine and coastal physical processes is set out at [[APP-043](#)] and supported by [[APP-070](#)]. Table 2.17 of [[APP-043](#)] sets out the mitigation measures embedded into the project design in relation to physical processes. This includes scour protection around WTG foundations where necessary and cable burial and protection measures. Three specific physical processes receptors were identified, namely: designated coastal features (such as saltmarshes and dune systems), sandbanks and designated chalk features.
- 5.8.7. Table 2.22 of [[APP-043](#)] provides a summary of the predicted changes and effects in relation to this topic. The Applicant concludes that for all receptor groups, the level of effect significance was either negligible or minor adverse, and therefore not significant in EIA terms<sup>166</sup>.

## Planning Issues

- 5.8.8. A number of matters requiring clarification or elaboration were raised through RRs, most notably in relation to: the consistency of scour and cable protection volumes assessed and secured within the dDCO/DMLs [[RR-049](#)][[RR-053](#)]; wave climate effects [[RR-049](#)]; and potential effects of migration of sandwaves [[RR-054](#)]. The ExA asked a number of questions in this regard at ExQ1<sup>167</sup> [[PD-012](#)] and work between the Applicant and relevant IPs and OPs on these points appeared to continue during the Examination.
- 5.8.9. The final submitted Schedule of Mitigation [[REP7-017](#)] identified the following mechanisms for securing mitigation relevant to marine physical and coastal processes, all of which are included in DML conditions within the Applicant's final draft DCO [[REP8-013](#)]:
- Biogenic Reef Mitigation Plan [[REP4-025](#)], a certified document under article 35 of [[REP8-013](#)], to minimise interaction with designated seabed reef features;
  - Cable Specification, Installation and Monitoring Plan, secured under DML conditions 13(1)(g) and 11(1)(h) of Schedules 11 and 12 of [[REP8-013](#)] respectively, to specify details of cable burial depth, cable

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<sup>166</sup> Paragraph 2.17.6 of [[APP-043](#)].

<sup>167</sup> ExQ1.11.1 - 1.11.5.

- protection and means for protection of designated coastal features;  
and
  - Scour and Cable Protection Plan, secured by DML conditions 13(1)(e) and 11(1)(f) of Schedules 11 and 12 of [\[REP8-013\]](#) respectively.
- 5.8.10. Table 5 of the final SoCG between the Applicant and the MMO [\[REP6-011\]](#) indicates agreement on all matters relating to the assessment and mitigation of potential effects on marine geology, oceanography and physical processes. The final SoCG with NE [\[REP6-016\]](#) also records, at Table 4, a position of general agreement on these matters.
- 5.8.11. Table 4 of the SoCG with KWT [\[REP6-010\]](#) contains some additional observations from KWT, however the overall position was also one of agreement, subject to mitigation measures such as the Cable Specification, Installation and Monitoring Plan. No concerns in relation to the effect on coastal processes were evident in the submissions of KCC, TDC or DDC.
- 5.8.12. The specific matter of the potential navigation and shipping effects of the migration of sandwaves into navigable waters between the North East Spit and the shore as a result of the Proposed Development was raised by PLA [\[RR-054\]](#). The Applicant responded in [\[REP1-017\]](#)<sup>168</sup> with reference to material contained in the submitted ES [\[APP-043\]](#).
- 5.8.13. The final submitted SoCG with PLA [\[REP7-048\]](#) states: *'The PLA assumes that the appropriate mitigation has been put in place to ensure any impact from sandwaves is appropriately dealt with and would like confirmation of such from the Applicant'*<sup>169</sup>. The same response was stated in relation to the potential for sedimentation that could affect navigation in the area. There is no record of agreement on these matters before closure of the Examination.

## **ExA Response**

- 5.8.14. The ExA notes that concerns raised by IPs and OPs on this topic in the early stages of the Examination were subsequently dealt with by the Applicant and agreement with the MMO, NE and KWT on the majority of points raised was reached by the end of the Examination.
- 5.8.15. The potential shipping and navigation effects of sandwave migration and sedimentation as a result of the Proposed Development remained an area of outstanding disagreement between the Applicant and PLA. The SoCG [\[REP7-048\]](#) acknowledged that there was the potential for agreement subject to the receipt of evidence of mitigation from the Applicant which appears not to have been satisfactorily provided during the Examination. This was not a matter raised by any other party.
- 5.8.16. The ExA observes that the Applicant's final draft DCO [\[REP8-013\]](#) contains at condition 17(2)(d) of Schedule 12 a commitment to one full sea floor

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<sup>168</sup> Page 387 of [\[REP1-017\]](#).

<sup>169</sup> Page 31 of [\[REP7-048\]](#).

coverage swath-bathymetry survey within twelve months of the completion of the activities licensed under the export cable system DML to assess any changes in bedform topography. It also provides for such further monitoring or assessment as may be agreed with the MMO to ensure that cables have been buried or protected. This would secure the monitoring of changes in seabed geomorphology following construction of the Proposed Development and give the MMO the power to request further monitoring or assessment, if necessary.

- 5.8.17. The ExA considers that this, taken together with the Cable Specification, Installation and Monitoring Plan, the Scour and Cable Protection Plan, and the Applicant's assessment [[APP-043](#)] and subsequent points of clarification [[REP1-017](#)], provides sufficient certainty that adequate monitoring and mitigation of any effects in this regard are secured.
- 5.8.18. The ExA is therefore satisfied that the potential for impact on the marine coastal and physical environment as a result of the construction and operation of the Proposed Development has been properly assessed and reasonably minimised. The Applicant has also considered the impacts of climate change and coastal change when planning the location and design of the Proposed Development, as evidenced in [[APP-043](#)]<sup>170</sup> and supporting technical annex [[APP-070](#)]<sup>171</sup>, which were not disputed by any IPs during the Examination.
- 5.8.19. Consequently, it is the ExA's view that the relevant policy tests contained within NPSs EN-1 and EN-3, and the MPS have been adequately addressed.

## **Conclusion on Marine & Coastal Physical Processes**

- 5.8.20. This section sets out the ExA's overall conclusions in relation to marine and coastal physical processes. Taking all relevant evidence and policies into account, the ExA concludes as follows.
- Adverse impacts on marine and coastal physical processes are limited in scope, effectively mitigated and mitigation is appropriately secured.
  - Relevant NPS and MPS policy tests are met.
  - This issue is a neutral consideration in the overall planning balance.

## **5.9. WATER ENVIRONMENT**

### **Introduction**

- 5.9.1. This section considers the effect of the Proposed Development on:
- offshore water quality; and
  - onshore water quality.

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<sup>170</sup> Evidenced, for example, in paragraphs 2.4.9, 2.7.6, 2.7.62 and 2.11.100 of [[APP-043](#)].

<sup>171</sup> Evidenced, for example, at sections 5.4.8, 5.4.9 and 11 of [[APP-070](#)].

## **Policy Considerations**

- 5.9.2. NPS EN-1 paragraph 5.15.5 requires the SoS to consider whether development would have an adverse effect of the achievement of environmental objectives established under the Water Framework Directive.
- 5.9.3. Offshore, regard should be had to shoreline or estuary management plans. Onshore, regard should be had to River Basin Management Plans (EN-1 paragraph 5.15.6).
- 5.9.4. NPS EN-3 paragraph 2.6.189 identifies the potential for construction of an OWF to give rise to extensive physical effects including effects on waves and tides, scour, sediment transport, turbidity and water quality effects. Paragraphs 2.6.193-4 expect the Applicant to identify and mitigate such effects.
- 5.9.5. Compliance with the WFD and MSFD are both relevant to this issue.

## **The Applicant's Case**

- 5.9.6. The application documents provide a clear statement of the effects of the Proposed development on the water environment and the measures necessary to mitigate those effects and deliver policy compliant performance.
- 5.9.7. ES Volume 2 Chapter 3 [[APP-044](#)] considers Marine Water and Sediment Quality. This identifies the main effects during the construction, operational and decommissioning phases, together with mitigation measures. ES Volume 3 Chapter 6 [[APP-062](#)] (Ground Conditions, Flood Risk and Land Use) provides similar analysis in the onshore environment. WFD compliance is considered in the Water Framework Directive Assessment [[APP-076](#)].

## **Planning Issues**

- 5.9.8. As is identified and discussed in section 5.7 (construction) above, the main water environment effects of concern arise from construction effects, both offshore and onshore. The positions of the Applicant, IPs and OPs on construction related effects are identified and reported upon in that section. They do not need to be rehearsed again in detail here.
- 5.9.9. Effects from offshore construction relate to sea-bed preparation, the installation of foundations for WTGs and the offshore substation, the installation of offshore cables, scour protection and cable protection.
- 5.9.10. Effects from onshore construction relate to the passage of cables from the landfall at Pegwell Bay across an area that was historically used for landfill.
- 5.9.11. Operations have potential water quality effects offshore and onshore, ranging mainly associated with the storage and management of

chemicals, materials and equipment and the carrying out of maintenance.

5.9.12. Decommissioning activities also have potential implications for offshore and onshore water quality.

5.9.13. None of these were matters of substantial contention from IPs and OPs.

## **ExA Response**

5.9.14. Potentially adverse effects on water quality at sea are in the ExA's view adequately managed during construction by the provisions of conditions 25 (Sch 11 (now 10) and 23 (Sch 12 (now 11) of the dDCO. These provide for:

- A construction method statement (CMS) detailing (amongst other matters):
  - WTG foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works;
  - offshore substation location and installation, including scour protection;
  - cable installation, including cable landfall and cable protection; and
  - vessels and vessels transit corridors used in construction.
- A project environmental management plan (PEMP) for both the construction and operational phases, which must include:
  - a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents;
  - a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance; and
  - waste management and disposal arrangements.
- A scour protection management and cable protection plan (managing the design and application of scour and cable protection with implications for sediment movement and transport).

5.9.15. Taken together and subject to the approval of these plans by the MMO before the commencement of construction, the ExA is satisfied that sufficient security exists to ensure that offshore water quality standards would be met.

5.9.16. During the operational phase offshore, the provisions of conditions 25 (Sch 11 (now 10) and 23 (Sch 12 (now 11) of the dDCO also secure an offshore operations and maintenance plan (OOMP) to be in accordance with an outline offshore operations and maintenance plan (OOOMP) [[REP4-026](#)] in which all relevant ES commitments to the maintenance of marine water and sediment quality during operation are identified. The ExA is content with the scope of the OOOMP as submitted and agrees that impacts would be adequately controlled.

- 5.9.17. Onshore during construction, the ExA notes the potential for the release of contaminants from the former landfill area at Pegwell Bay as a potentially significant adverse environmental effect. However, the framework of the CoCP, pre-commencement site investigation works subject to a CLGP and then construction works subject to a further stage CLGP as secured in requirement 24 ensures that any relevant impact can be addressed in construction mitigation measures, designed in consultation with the EA for approval by the relevant LPA.
- 5.9.18. Equivalently the ExA notes the construction site for the onshore substation as another source of potential pollution of and discharge to surface and groundwaters. This has been anticipated and is adequately controlled by requirement 23 which requires the preparation of a surface water and drainage management plan for the substation before the commence of construction, for approval by the relevant LPA.
- 5.9.19. Offshore decommissioning is subject to control by the SoS under s105 (2) of the Energy Act 2004, secured in requirement 11. Requirement 32 provides for an onshore decommissioning plan to be submitted to and approved by the relevant LPA. The ExA is again content that measures to ensure water quality would be addressed through these mechanisms.
- 5.9.20. The ExA has reviewed water environment effects more generally and is content that relevant legislative and policy requirements (including those arising from the WFD and MSFD) are met by the Proposed Development and adequately secured in the dDCO.

## **Conclusion on the Water Environment**

- 5.9.21. This section sets out the ExA's overall conclusions in relation to the water environment. Taking all relevant evidence and policies into account, the ExA has found as follows:
- The effects of the Proposed Development on water quality onshore and offshore have been adequately assessed and mitigated and mitigation is properly secured in the DCO.
  - Relevant policies are complied with.
  - This issue is neutral for the purposes of the planning balance.

## **5.10. AIR NAVIGATION, AVIATION AND AIRPORTS**

### **Introduction**

- 5.10.1. This section considers the effect of the Proposed Development on:
- civil and military aviation;
  - airports and their navigation systems.

### **Policy Considerations**

- 5.10.2. NPS EN-1 paragraph 5.4.14 provides that the Secretary of State 'should be satisfied that the effects on civil and military aerodromes, aviation

technical sites and other defence assets have been addressed by the applicant and that any necessary assessment of the proposal on aviation or defence interests has been carried out.' Where mitigation is required, the Secretary of State can consider the use of "Grampian", or other forms of condition which relate to the use of future technological solutions, to mitigate impacts (paragraph 5.4.18).

- 5.10.3. NPS EN-1 paragraph 5.4.15 of EN-1 advises that if there are conflicts between the Government's energy and transport policies and military interests in relation to the application, the decision-maker should expect the relevant parties to make appropriate efforts to identify realistic and pragmatic solutions. A developer should seek to protect the aims and interests of the other parties as far as possible.
- 5.10.4. Paragraph 5.4.16 of EN-1 advises that there are statutory requirements concerning the fitting of lighting to tall structures. Where lighting is requested on a structure that goes beyond statutory requirements by any of the relevant aviation and defence consultees, the decision maker should satisfy itself of the necessity of such lighting, taking into account the case put forward by the consultees. The effect of such lighting on the landscape and ecology may be a relevant consideration.
- 5.10.5. Paragraph 5.4.17 of EN-1 informs that where, after reasonable mitigation, operational changes, obligations and requirements have been proposed, the decision maker considers that the development would have an impact on the safe and efficient provision of *en-route* air traffic control services for civil aviation, in particular through an adverse effect on the infrastructure required to support communications, navigation or surveillance systems then consent should not be granted.
- 5.10.6. NPS EN-3 paragraph 2.6.107 indicates that aviation and navigation lighting should be minimised to avoid attracting birds, taking into account impacts on safety.
- 5.10.7. Maritime and Coastguard Agency (MCA) Maritime Guidance Notes (MGN) 543: Safety of Navigation Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response (MCA, 2016) contains information for operators and developers in formulating their emergency response plans and site safety management.

## **The Applicant's Case**

- 5.10.8. In [[APP-067](#)] the Applicant states; '*Whilst not definitive, Civil Aviation Policy: CAP 764 (CAA, 2016a) provides criteria for assessing whether any WTG development might have an impact on civil aerodrome related operations. Consideration of the proposed development's potential to impact on aviation stakeholders and receptors has been undertaken in accordance with the standard consultation distances stated in CAP 764. A number of consultees and receptors were scoped out from the consultation process as they were out-with the CAP 764 consultation zones or criteria which include:*

- 'Within 30 km of an aerodrome with surveillance radar – although it is acknowledged that the distance quoted in CAP 764 can be greater than 30 km dependent on a number of factors at individual aerodromes, including type and coverage of radar utilised.
- '(a) Development Consent Order (DCO) has been submitted for the reopening of Manston Airport (formerly Kent International Airport), which has subsequently been withdrawn. It is understood that the applicant is planning to resubmit the DCO for Manston Airport; but, the timescales for this are unknown (National Infrastructure Planning, 2018). The former airport is presently closed and if reopened would be located inside of 30 km from the proposed development<sup>3</sup>.'

5.10.9. The Applicant also reported in [[APP-067](#)] that

- 'London Southend Airport (LSA) operates Primary Surveillance Radar (PSR) which is located outside the 30 km consultation distance suggested by the CAA and it is considered may be affected by the project';
- 'It is necessary to take into account the aviation and air defence activities of the MoD, the type of receptor including MoD airfields both radar and non-radar equipped, MoD Air Defence Radar (ADR), Meteorological Radar and Practice & Exercise Areas (PEXAs)';
- the Planning Inspectorate Scoping Opinion (the Planning Inspectorate, 2017) stated that MoD and NATS infrastructure should be considered within the Preliminary Environmental Information Report (PEIR) including military PEXAs<sup>172</sup>. Furthermore, the Scoping Opinion welcomed the provision of an Emergency Response Co-operation Plan (ERCoP) which would be referred to as part of the ES.
- 'The MCA stated that particular attention should be given to the implications of the site size and location on SAR resources and ERCoPs.' The Applicant responded that 'the ERCoP will be completed initially in discussion between the developer and the MCA, Search and Rescue and Navigation Safety Branches. Detailed completion of the plan will then be in cooperation with the Coastguard Operations Centre (CGOC) responsible for maritime emergency response in the area of Thanet Extension. The ERCoP will then be submitted to and approved by the MCA.'
- 'NATS confirmed that based on the information provided to them that no predicted impact to NATS En-Route infrastructure was predicted at the increased blade tip height of 250 m above HAT.'
- In response to the Scoping Report 'The Defence Infrastructure Organisation (DIO) on behalf of the MoD states that the MoD has no objection to the proposal, the principal safeguarding concern relating to physical obstruction to air traffic movements and potential to cause interference to Air Traffic Control (ATC) and ADR radar installations...The MoD has not raised any concerns regarding impacts on ADR, therefore ADR is not considered further in the assessment...

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<sup>172</sup> PEXAs or 'practice and exercise areas' are defined military exercise areas and danger areas.



- 'The MoD accepted that the PEIR took into account military PEXAs, the use of airspace for defence purposes and potential impact to defence radar systems. Military low flying may be conducted over the sea beyond the mapped area of the UK Low flying system, the MoD may request that supporting associated infrastructure are fitted with aviation warning lighting where there is no mandatory requirement for installation.'

- 5.10.10. In regard to the National Police Air Service (NPAS), the Applicant reported in [[APP-067](#)] that: *'The infrastructure required in the construction of Thanet Extension may present a physical obstruction and effect operations of NPAS. Only a small number of NPAS helicopter bases which have a coastal location are likely to operate over the sea. The sensitivity of the receptor is Medium; however, the magnitude of effect is considered as Low and the impact is assessed as of Minor adverse significance on operations, subject to the completion of standard notification to aviation authorities as detailed in section 11.8, which is not significant in EIA terms.'*
- 5.10.11. The Applicant reported in [[APP-067](#)] that London Southend Airport (LSA) responded to consultation that the operational TOWF is detectable by the LSA Primary Surveillance Radar (PSR). LSA informed the Applicant that a cumulative impact in conjunction with the TOWF WTGs is predicted. It was agreed between the Applicant and LSA that a Non-Automatic Initiation Zone (NAIZ) solution to the LSA PSR would be the most effective solution in mitigation of individual and cumulative impact created by the detectability of the WTGs. *'LSA currently use a NAIZ function to technically mitigate onshore WTGs that affect their provision of ATS to flight operations...The implementation of a NAIZ software function to the LSA PSR system is considered an appropriate mitigation strategy by LSA and is agreed by VWPL, with the mitigation in place the impact is assessed as Negligible.'*
- 5.10.12. In [[REP7-031](#)] the Applicant confirmed that: *'following the Preliminary Meeting the CAA have been contacted again regarding a SoCG. No response has been received to date...The Applicant has engaged with NATS en route plc and received confirmation that the turbine array as submitted will not interfere with their operations.'*
- 5.10.13. The Applicant confirmed that consultation was instigated with the Consultation was instigated with the Dutch Supervising Authority for Air Navigation Services, the Belgian Supervising Authority for Air Navigation Services and the French Supervising Authority for Air Navigation Services but no response was received *'therefore, the site is expected to result in a Negligible impact'*. At [[REP5-002](#)] it was confirmed that no response from any of these had been received.
- 5.10.14. The MoD was consulted as necessary by the Applicant on potential for aviation impact of Proposed Development including Air Defence Radar (ADR) and MoD has had multiple opportunities to raise substantive concerns and has not done so.

## Planning Issues

- 5.10.15. The planning issues raised relate to effects on civil aviation, air traffic control, emergency service and defence aviation. They did not give rise to significant concerns from IPs and OPs.
- 5.10.16. Manston Airport is close to the Proposed Development, but was scoped out of assessment for aviation mitigation measures because it is presently closed, albeit subject to a DCO application for its reopening. The applicant for the Manston Airport DCO (RiverOak Strategic Partners) was an IP [RR-030] but did not make detailed written or oral submissions seeking mitigation measures by design or agreement. A SoCG between the Applicant and RiverOak Strategic Partners [REP8-024] demonstrates that all outstanding matters relating to cumulative effects between the two projects, flight paths, radar and aviation lighting had been resolved such that additional infrastructure and installations that might be required consequent on Manston becoming an operational airport once more would be provided at the cost of its operators.
- 5.10.17. As reported in [APP-067] and discussed at para 5.10.11 above, London Southend Airport (LSA) was consulted and the Applicant reports that the implementation of a NAIZ software function to the LSA PSR system *'is considered an appropriate mitigation strategy by LSA and is agreed by VWPL, with the mitigation in place the impact is assessed as Negligible.'*
- 5.10.18. As reported in [REP7-031] and discussed at para 5.10.12 above, NATS confirmed that based on the information provided to them that no predicted impact to NATS En-Route infrastructure was predicted at the increased blade tip height of 250 m above HAT.
- 5.10.19. No response to consultation was received by the Applicant from the Dutch Supervising Authority for Air Navigation Services, the Belgian Supervising Authority for Air Navigation Services and the French Supervising Authority for Air Navigation Services. On that basis, in the absence of evidence to the contrary there appear to be no impacts adverse to the interests of aviation in those jurisdictions that need to be taken into account.
- 5.10.20. In relation to emergency services aviation, the National Police Air Service (NPAS) was consulted by the Applicant which reported in [APP-067] that: *'...Thanet Extension may present a physical obstruction and effect operations of NPAS...the impact is assessed as of Minor adverse significance on operations, which is mitigated by the completion of standard notification to aviation authorities.'* NPAS did not become an IP and there were no other concerns by emergency services aviation bodies.
- 5.10.21. The Applicant reports that the MoD accepted that the PEIR took into account military PEXAs, the use of airspace for defence purposes and potential impact to defence radar systems and that the MoD has no objection to the proposal, the principal safeguarding concern relating to physical obstruction to air traffic movements and potential to cause interference to Air Traffic Control (ATC) and ADR radar installations. The

Applicant goes on to make the statement that *'the MoD has not raised any concerns regarding impacts on ADR, therefore ADR is not considered further in the assessment...'*.

- 5.10.22. The Applicant reports in [REP5-002] that MoD responded to consultation that *"the proposed development will not directly affect national defence requirements or interests including defence maritime [sic] navigation"*. The Applicant concluded to the Examination that MoD *'does not intend to engage with the Applicant further on this matter and understands that no additional non-mandatory aviation warning lighting is to be requested and as such, no amendment to the DCO is required'*.
- 5.10.23. The ExA in Written Question 2.4.9 noted in Section 11.3 of [APP-067] Aviation and Radar, MoD raised a point about non-mandatory aviation warning lighting on WTGs to mitigate hazards to low-flying aircraft and asked the Applicant if this is a matter that requires to be addressed any further in the DCO.
- 5.10.24. The Applicant responded in [REP5-002] that it had *'received confirmation from the Ministry of Defence (REP2-046) that "the proposed development will not directly affect national defence requirements or interests including defence maritime [sic] navigation". Accordingly, the MOD has deferred to the relevant statutory bodies in relation to maintaining maritime navigational standards and requirements, and does not intend to engage with the Applicant further on this matter. The Applicant therefore understands that no additional non-mandatory aviation warning lighting is to be requested and as such, no amendment to the DCO is required.'*

## **ExA Response**

- 5.10.25. The ExA accepts that consideration of the Proposed Development's potential to impact on civil aviation stakeholders and receptors has been undertaken *'in accordance with the standard consultation distances'* stated in Civil Aviation Policy CAP 764. Normal aviation safety lighting for WTGs / structures at sea are proposed and secured.
- 5.10.26. Matters relating to the possible return to operation of Manston Airport are to be addressed if such a decision is taken and at the cost of that facility's operator. No special provision is called for in the DCO.
- 5.10.27. In regard to Air Defence Radar, the ExA notes that the Applicant reports *'the MoD has not raised any concerns regarding impacts on ADR, therefore ADR is not considered further in the assessment...'*. No other matters arose in examination that require action to address defence interests.

## **Conclusion on Air Navigation, Aviation and Airports**

- 5.10.28. This section sets out the ExA's conclusions on air navigation, aviation and airports. Taking all relevant documents and policies into account, the ExA has found as follows.

- The DCO adequately secures the normal aviation safety lighting.
- There are no residual adverse impacts on civil aviation. Any additional requirements arising from the possible return to service of Manston Airport are to be addressed by the operator of that facility.
- There are no residual adverse impacts on military aviation.
- This issue is neutral in terms of the planning balance.

## **5.11. ELECTRIC & MAGNETIC FIELDS**

### **Introduction**

5.11.1. This section considers the effect of the Proposed Development on:

- Public health in regard to electromagnetic fields (EMF).

### **Policy Considerations**

5.11.2. NPS EN-1 Para 4.13 notes that direct impacts on health from energy projects may include exposure to radiation.

5.11.3. NPS EN-5 is not directly applicable to this case but may be considered important and relevant. In ES chapter 6.3.12 [[APP-068](#)] it is noted that '*[a]lthough putting cables underground eliminates the electric field, they still produce magnetic fields, which are highest directly above the cable (see para 2.10.12). EMFs can have both direct and indirect effects on human health...'*

5.11.4. EIA Regulations 2017 Part 1.4 (2)(a) requires identification and assessment of the direct and indirect significant effects of the Proposed Development *inter alia* on population and human health.

5.11.5. In 2004 the Government adopted guidelines published in 1998 by the International Commission on Non-Ionizing Radiation Protection (ICNIRP, 1998) in accordance with the terms of the 1999 EU Council recommendation on limiting public exposure to EMF (EU,1999). The criteria establish acceptable limits for exposure of the public to EMF that adopt a precautionary approach.

### **The Applicant's Case**

5.11.6. NPS EN-1 Para 4.13 is addressed by ES Chapter 12 [[APP-068](#)] section 12.10, 12.11, 12.12, 12.13 and as noted in Table 12.3 of ES Chapter 12.

5.11.7. NPS EN-5 focuses on guidance primarily in relation to overhead lines which is not applicable to Thanet Extension as all export transmission cables from the offshore array, through to the landfall location at Pegwell Bay Country Park and onward to the substation at Richborough Port and from there to grid connection at Richborough Energy Park would be buried or encased in appropriate bunding.

5.11.8. 5.7.4. EIA Regulations 2017 Part 1.4 (2)(a) is addressed by ES Chapter 12 section 12.4 and as noted in Table 12.3 of ES Chapter 12.

- 5.11.9. In ES Chapter 12 [APP-068] the Applicant notes that *'Whilst there are no statutory regulations in the UK that limit the exposure of people to power-frequency EMF, responsibility for implementing appropriate measures for the protection of the public lies with the UK Government, who have a clear policy, restated in October 2009 (Department of Health, 2009) and incorporated in NPS EN-5 (DECC, 2011), on the exposure limits and other policies they expect to see applied. It is important to note however that whilst reference is made to EN-5 insofar as it relates to electrical infrastructure the Thanet Extension project has been actively designed to avoid overhead lines and the associated effects by committing to underground all electrical cable infrastructure.'*
- 5.11.10. ES Chapter 12 para 12.4.2 notes that electromagnetic radiation during operation is not assessed in a dedicated ES chapter but is assessed within chapter 12 *'with respect to the study area encompassing the onshore cable route which is described in section: 12.7 and in detail in Volume 3, Chapter 1: Project Description – Onshore (Document Ref: 6.3.1). In summary the potential impact is restricted to a very localised study area <5m of the export cable'*.
- 5.11.11. At paras 12.11.5 to 12.11.10 the Applicant notes:
- *'The cables will be buried to at least 0.5 m within areas used by the public (e.g. The Baypoint Club and Pegwell Bay Country Park) which will significantly reduce the exposure to electromagnetic radiation. The onshore substation will be adequately secured and accessed only by authorised personnel with appropriate training and safety equipment.'*
  - *'The area which the proposed cables will pass through contains no residential living and is comprised of open land used for leisure activities and industry. Therefore, the sensitivity of the receptor to electromagnetic radiation is considered to be Low.'*
  - *'With a magnitude of impact assessed as Negligible and the sensitivity of the receptor to electromagnetic radiation being assessed as Low, the effect is therefore assessed as Negligible adverse significance, which is not significant in EIA terms.'*
- 5.11.12. In assessing Cumulative EMF effects, the Applicant states at 12.13.6 *'(T)he cumulative impact of exposure to electromagnetic radiation will be of local spatial extent with emitting infrastructure connecting to the Richborough Energy Park at different locations. The area to most likely emit the highest EM radiation is the Richborough Energy Park as all other infrastructure, such as the Nemo Link and the existing Thanet OWF cables are buried and will not result in a cumulative increase in EMF'* and at 12.13.17 *'Therefore, the significance of effect from the electromagnetic radiation exposure from the operational Thanet Extension and the electrical production/ transmission infrastructure projects outlined in Table 12.8 is Negligible adverse, which is not significant in EIA terms.'*

## **Planning Issues**

- 5.11.13. In its RR [[RR-055](#)], Public Health England states that it is satisfied that the project would not pose a significant risk to public health in terms of the potential impact of electric and magnetic fields.
- 5.11.14. During s42 consultation, Kent CC raised concern that EMF from cables could be a '*safety concern to people and wildlife*'. This was addressed in the ES section 12.11.5. Neither the LIR nor the final SoCG with KCC raise any ongoing EMF concerns. No concerns regarding EMF effects were raised by Thanet DC or Dover DC in RRs, LIRs or during the Examination.

## **ExA Response**

- 5.11.15. Because the transmission cable infrastructure onshore would be buried, the ExA agrees with the Applicant's ES and the advice from Public Health England that EMF effects arising from the project would be of negligible adverse significance and would not pose a significant risk to public health.

## **Conclusion on Electric & Magnetic Fields**

- 5.11.16. This section sets out the ExA's conclusions on electric and magnetic fields. Taking all relevant evidence and policies into account, the ExA has found that:
- There are no outstanding concerns about the effects of EMF in relation to this DCO application.
  - This issue is neutral in terms of the planning balance.

## **6. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES PART B: CONTINGENT ISSUES**

### **6.1. INTRODUCTION**

- 6.1.1. This is the second chapter setting out the ExA's consideration of individual planning issues that are important and relevant considerations for the SoS decision. It sets issues out alongside an analysis of the detailed legal and policy framework applicable to each planning issue and integrates any overarching analysis from Chapter 4. It then sets out an ExA conclusion for each issue, which is carried forward into the planning balance in Chapter 9 below.
- 6.1.2. Issues addressed in this Chapter are issues that in the ExA's consideration appeared to be contingent, in that they required an assessment of inputs from one or more primary issue recorded in Chapter 5 above before they in turn could be assessed. This does not mean that the issues considered here are less important than the issues considered in Chapter 5. Rather it means that it is necessary to evaluate and compound the issues considered there and reach relevant findings and conclusions, before one can evaluate the issues considered here.
- 6.1.3. The following issues are addressed in this Chapter:
- Section 6.2: Fishing and fisheries;
  - Section 6.3: Effects on other infrastructure;
  - Section 6.4: Socio-economic effects; and
  - Section 6.5: Other effects.
- 6.1.4. Both this Chapter and Chapter 5 are separate from but related to Chapters 7 and 8 which address all matters relevant to the Natura 2000 network of sites and European Protected Species (EPS) whether these sites are within the jurisdiction of the UK (subject to HRA)(Chapter 7), or in another EEA State (Chapter 8).

### **6.2. FISHING & FISHERIES**

#### **Introduction**

- 6.2.1. This section considers the effect of the Proposed Development on:
- commercial fish stocks; and
  - commercial fishing operations.

The matters are considered here in terms of physical and business operational effects. Navigational effects relevant to fishing vessels are considered in Section 5.2 above. Natural environment effects on fish populations (which include matters such as species spawning which contribute to the operation of a viable fishery) are considered in Section 5.3 above. Socio-economic effects on the commercial fishing sector are considered in Section 6.4 below.

## Policy Considerations

- 6.2.2. Paragraph 2.6.123 of NPS EN-3 identifies that whilst certain fishing activities are compatible with and may even be benefitted by an operational OWF, others (such as trawling and long-lining) can be hindered by such development.
- 6.2.3. NPS EN-3 para 2.6.125 provides that '[w]here an offshore wind farm could affect a species of fish that is of commercial interest, but is also of ecological value, the [SoS] should refer to paragraphs 2.6.58 to 2.6.77 of this NPS with regard to the latter.' This seeks integrated consideration of commercial fish species and natural environment considerations.
- 6.2.4. And NPS EN-3 para 2.6.132 provides that: '[t]he [SoS] 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 and the activity of fishing itself. This will include siting in relation to the location of prime fishing grounds. The [SoS] should consider the extent to which the proposed development occupies any recognised important fishing grounds and whether the project would prevent or significantly impede protection of sustainable commercial fisheries or fishing activities. Where the [SoS] considers the wind farm would significantly impede protection of sustainable fisheries or fishing activity at recognised important fishing grounds, this should be attributed correspondingly significant weight.'
- 6.2.5. Paragraph 2.6.132 requires the SoS to be satisfied that adverse effects on commercial fish stocks have been minimised and adverse effects on commercial fishing have been taken into account and adequately mitigated. Where the SoS considers that a Proposed Development would impede '*fishing activity at recognised important fishing grounds, this should be attributed correspondingly significant weight*'.
- 6.2.6. The SoS 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 other marine interests' (paragraph 2.6.133). The virtue of co-existence planning is promoted by the policy.
- 6.2.7. Mitigation should be provided to address identified adverse effects. Paragraphs 2.6.134 – 6 of NPS EN-3 provide as follows.

*'Any mitigation proposals should result from the applicant having detailed consultation with relevant representatives of the fishing industry.*

*'Mitigation should be designed to enhance where reasonably possible any potential medium and long-term positive benefits to the fishing industry and commercial fish stocks.*

*'The [SoS] will need to consider the extent to which disruption to the fishing industry, whether short term during 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's Case**

- 6.2.8. ES Volume 2 Chapter 5 (Benthic Subtidal and Intertidal Ecology) and Chapter 6 (Fish and Shellfish Ecology) characterise the effect of the Proposed Development on fish habitat and species. Matters in relation to these effects are addressed in Chapter 5.3 above.
- 6.2.9. ES Volume 2 Chapter 9 [[APP-050](#)] addressed commercial fisheries impacts. Its starting point was that net impacts would be 'minor'.
- 6.2.10. The Applicant had drawn on the experience of constructing and operating the existing TOWF and had developed a Fisheries Liaison and Co-existence Plan (Rev C) [[REP6-057](#)], updated to take account of matters raised in Examination. This provided for:
- The appointment of a company and an offshore Fishing Liaison Officer (FLO and OFLO) to engage with the fishing community;
  - Appointment of guard vessels;
  - The development of co-existence strategies including fishing community involvement in the offshore operation and maintenance plan;
  - A code of good practice including measures for compensation for the loss of gear; and
  - Pre- and post-construction drift net surveys to identify snagging hazards.
- 6.2.11. Taking these measures into account, the Applicant retained its position that effects at a fleet level would be 'minor'. However, it was conceded that effects on individual vessels and businesses could be quite significant. The Applicant was prepared in principle to work with TFA on disruption agreements as a mechanism to remediate and compensate for adverse effects [[REP5-031](#)].
- 6.2.12. In relation to the material change proposal and the introduction of the SEZ, the Applicant was of the view that this would have no additional adverse effect on fishing and fisheries and would serve to retain access to some grounds that might otherwise be affected more adversely if the SEZ were not implemented [[REP4B-014](#)].
- 6.2.13. SoCGs were prepared with TFA [[REP7-030](#)] and KEIFCA [[REP6-068](#)]. The TFA SoCG demonstrates that whilst a broad range of matters were agreed, including the need to progress disruption agreements at both the individual and community level, the characterisation of fisheries impact in the ES remained unagreed and hence the list of fisheries impacts and outcomes was not agreed. All outstanding points of disagreement between the Applicant and KEIFCA were documented as resolved by the close of the Examination.

## Planning Issues

- 6.2.14. The owners and operators of a substantial number of fishing vessels formed the main body of local community IPs participating in the Examination. 16 RRs were made by people directly engaged in the local fishing industry.
- 6.2.15. The ExA provided defined opportunities for the dedicated hearing of fishing and fisheries matters in ISH6, which was specifically devoted to fishing and fisheries, and ISH8, where an evening session was set aside within a broader agenda to focus on fishing and fisheries matters to review progress on dialogue between the Applicant and the fishing community.
- 6.2.16. The positions of the fishing community were co-ordinated by the Thanet Fishermens' Association (TFA), a representative body for the broader community [[RR-014](#)] [[REP1-132](#)]. The TFA participated fully in both hearings and was supported by individual vessel owners/ operators and crew. The National Federation of Fishermens' Organisations (NFFO) requested and was accorded OP status [[PD-021](#)][[AS-017](#)] as did Kent and Essex Inshore Fisheries and Conservation Authority (KEIFCA) [[AS-028](#)][[REP1-099](#)]. Commercial Fishermens' Rights also made a RR [[RR-020](#)].
- 6.2.17. The TFA described the interests of its membership and the effects of the Proposed Development upon them in the following terms.
- 'The Thanet Extension project is being proposed in an area vital to the Inshore commercial Fishermen of Ramsgate, Broadstairs, Margate and Whitstable. The proposed TE array area and export cable are worked by Fishermen using multiple methods for a variety of fish and shellfish species. The area is fished using Lobster and Whelk pots, trawls, static nets, surface and bottom drift nets. Some of these methods will no longer be possible if the Thanet Extension wind farm is built and the ground will be lost. The inshore vessels are a non nomadic fleet and generally operate within a 25 mile radius of the harbour. The vast majority of the fleet is 10m and under in length.'* (TFA - [[RR-014](#)])
- 6.2.18. TFA acknowledged that the fishing industry assets, vessels and grounds (the receptors) had been in the main appropriately identified in the ES. However, it disputed the levels of impact upon them that were assessed. Impacts on directly affected inshore fishing vessels in its view would be 'very high' (as distinct from 'low minor'), because of temporary and in some cases permanent loss of ground and the inability of individual vessels to adapt to change gear or pursue different species without a need to change gear (expense) or obtain new licences (regulation) [[REP1-132](#)]. TFA also remained concerned that for a range of reasons, good catch and landing data was hard to come by and so the Applicant's valuation of the effect of loss of and disruption to particular fisheries might not be as high as it should be [[REP3-085](#)].
- 6.2.19. Emphasis was placed on the local fleet as being local and reliant on small or solo crews and vessels: not able to make long voyages to access new

fishing grounds. Temporary and or permanent displacement were therefore significant hardships. Individual fishermen (such as G Pulman [RR-016] who stated that he took 98% of his earnings from the area immediately around the existing TOWF) emphasised that the specific nature of their fishery, ground, vessel and gear meant that very significant disruption could be anticipated. Other fishermen pursued species on grounds and using methods that meant that effects would be more limited. Loss of fishing grounds, the impact of displacement on other fishermen [REP1-099] and the need for seasonal restrictions on construction activity to limit harm to spawning commercial species [AS-017] were all raised.

- 6.2.20. Some fishing IPs were concerned about navigational safety matters [REP1-132]. Fishing vessel movements tend to be from the shore to a fishing ground and so to run in broad terms across the movements of larger vessels following longer range courses, accessing pilot services, entering or leaving the Thames estuary. Instances of incidents in breach of COLREGS during previous OWF construction projects were raised. The contribution of fishing vessel movements to general navigation safety in waters within and surrounding the Proposed Development have been taken into account in Section 5.2 above.
- 6.2.21. Unlike the great majority of vessels, fishing vessels do operate within the constructed area of OWF installations. The existing TOWF accommodates active fisheries and is used by a number of vessels. The construction of the TEOWF would temporarily disrupt this access. The impact that this disruption would have would depend on the nature of the vessel, species, fishery and catch method.
- 6.2.22. During operation, for some vessels, species, fishery and catch methods there would be enduring adverse effects. Individual vessel owners referred to particular fishing grounds and methods that they expected to be significantly disrupted or to become non-viable as a consequence of WTG siting and associated installations.
- 6.2.23. In the operational phase, fishermen made reference to the value of platform level lighting for fishing vessels at night and in conditions of poor visibility [REP3-085]. They accepted that these are not formal aids to navigation as such. However, they requested (and the Applicant undertook to ensure) that such lighting, where provided, was maintained in a consistently operating condition as it assists individual vessels moving through an OWF area to avoid fixed structure hazards.

## **ExA Response**

- 6.2.24. The ExA opens its response on fishing and fisheries matters by commending in equal part the pragmatic working relationships that had clearly been generated between the Applicant and the fishing community as represented by the TFA. Both sides recognised the capacity for adverse effects on the fishing industry and community as a consequence of the development of the TEOWF. Both equally recognised that there are opportunities for mutual benefit and support.

- 6.2.25. Experience of co-existence (both planned and actual) between the existing TOWF and the Thanet fishing community had provided a solution-focussed culture in which the Applicant had good practice and relationships from which to draw and the fishing community was able to highlight workable solutions to mitigate identified impacts.
- 6.2.26. If Development Consent were to be granted, there would clearly be instances of considerable individual adverse effects to particular fisheries and vessels. These would arise most extensively during construction, when safety zone controls and the movement of large plant would make some existing fisheries inaccessible. However, they would also arise in operation, where the installation of WTGs would make certain fishing methods (such as long lining) in certain locations less viable.
- 6.2.27. The ExA provided TFA with an undertaking not to disclose commercially confidential information and hence vessel track records demonstrating the relationship between certain vessels, fishing methods, species and the location of the OWF have been redacted to remove this data. However, this step was taken with the understanding and consent of the Applicant, IPs and OPs involved in the fisheries hearings.
- 6.2.28. It flows from this evidence (and is not disputed by the Applicant) that, dependent on fishing method and gear, species sought and fishing ground, certain individual vessels would be significantly adversely affected by the construction process. Some would additionally have enduring loss of access to grounds due to the effect of the installation of WTGs and related development in locations that would particularly affect their existing business. For other fishermen and vessels, construction effects would be more limited and operational effects would be minimal.
- 6.2.29. For individual vessels experiencing significant adverse effects, the Applicant proposes to enter into individual disruption agreements to mitigate these effects, including in financial terms. Surveys would demonstrate whether grounds remained physically viable. Compensation for lost gear would be paid. The Applicant highlighted similar measures adopted around the construction and operation of the existing TOWF to demonstrate how these would work. The ExA is broadly content with this approach within the framework of the co-existence plan.
- 6.2.30. The ExA also notes that the Applicant proposes and TFA acknowledges that TEOWF construction and operation would provide business opportunities for individual vessels and crew to provide construction and maintenance related services to the OWF. Additionally, collective opportunities could arise, for example through the TFA provision of fuel to OWF-related vessels from its boat fuel business.

## **Conclusion on Fishing & Fisheries**

- 6.2.31. This section sets out the ExA's conclusions on fishing and fisheries. Taking all relevant evidence and policies into account, the ExA has found as follows.

- The level of engagement between the Applicant and the fishing community in co-existence planning has been good and opportunities to build upon effective practice developed for the existing TOWF have been taken.
- There would be some instances of individual harm to particular fisheries and vessels (largely dependent upon location and fishing method). Whilst mitigation has been applied and there is ongoing scope for the negotiation of further individual agreements between fishermen and the undertaker, some harm is unavoidable.
- There are also instances of prospective benefit through employment, contracting and business opportunities in construction for fishermen in construction and operation.
- Fish species impacts (including spawning effects and mitigations through seasonal controls) are adequately managed as detailed in section 5.3 above.
- Although specific recognition must be accorded to the individual concerns of and substantial adverse effects on some individual fishermen, vessels and businesses, due to the presence of benefits from development, the overall impact for the planning balance is net neutral in the planning balance.

## **6.3. EFFECTS ON OTHER INFRASTRUCTURE**

### **Introduction**

6.3.1. This section considers the effect of the Proposed Development on other infrastructure, including major projects and proposals as identified in Section 2.5 of this report above:

- Nemo Link (a constructed electricity interconnector between the UK and Belgium, terminating at Richborough Energy Park);
- the National Grid Richborough Connection (a transmission NSIP, in turn connecting to a substation at Richborough Energy Park);
- Manston Airport (an NSIP proposal to return former Manston Airport to aviation operation);
- Dover Harbour Board capital dredging at Goodwin Sands;
- BritNed Interconnector (a proposed interconnector between the UK and the Netherlands);
- in-combination effects with other OWF, oil and gas, aggregates and disposal use development at sea; and
- with utility infrastructure installations on land.

Whilst this section addresses effects on, from and between these projects, it does not do so in relation to cumulative effects arising within the other specific topics identified in this Report. These functions are addressed in Chapter 5 (above), Chapter 7 and Chapter 8 (below) respectively. Matters relating to the apparatus of statutory undertakers on land are addressed in Chapter 10 (CA and TP) below.

### **Policy Considerations**

- 6.3.2. NPS EN-1 identifies that the decision-maker should '*consider accumulation of effects [between projects] as a whole in their decision-making on individual applications for development consent...*' (paragraph 1.7.3). Paragraph 4.1.3 identifies that the SoS should, when weighing adverse impacts against benefits, take into account '*any long-term and cumulative adverse impacts...*'.

## **The Applicant's Case**

- 6.3.3. The Applicant's Cumulative Effects Assessment (CEA) [[APP-039](#)] outlines its approach to identifying potential interactions with other projects and proposals. Figure 1.1 identifies OWF proposals that are active/ in operation, under construction, consented, in planning and pre-planning. Figure 1.2 identifies oil and gas facilities that are undeveloped, producing and where production is suspended, has ceased or is abandoned. It also identifies ports (although ports considerations are addressed in Sections 5.2 above and 6.4 below). Figure 1.3 identifies aggregates and disposal areas at sea. The Applicant considers that it has undertaken all necessary cumulative impact assessment and that the design of the Proposed Development sufficiently addresses possible interactions between it and all of the projects documented in the CEA.
- 6.3.4. Onshore interactions with utility infrastructure providers have been managed in the DCO through the development of protective provisions where required.

## **Planning Issues**

- 6.3.5. As documented in paragraph 1.4.47 of this Report above, NG (in relation to the Richborough Transmission project), Nemo Link Ltd., SW (onshore water infrastructure) and UKPN (onshore electricity distribution assets) all withdraw their representations and ceased participation in the Examination on the basis of their satisfaction with the Applicant's position and/ or the provision of protective provisions.
- 6.3.6. A SoCG concluded between the Applicant and RiverOak Strategic Partners (Manston Airport) at D8 [[REP8-024](#)] demonstrates all remaining matters between the Proposed Development and this prospective aviation NSIP to have been agreed on the basis that the liability and cost of conforming aviation operations to an environment containing a constructed Thanet OWFE would rest on the potential future operator of Manston Airport.
- 6.3.7. An unwithdrawn submission from BritNed identifies that there is a 3km separation between its proposed cable alignment and the WTG array area at closest approach, with (dependent on phasing) '*potential risks from vessels anchoring during the construction phase*'. The Thanet undertaker was requested to assess these risks and take appropriate mitigating measures [[AS-012](#)].

## ExA Response

- 6.3.8. The ExA notes the withdrawal of objections by NG (in relation to the Richborough Transmission project), Nemo Link Ltd., SW (onshore water infrastructure) and UKPN (onshore electricity distribution assets) (see paragraph 6.3.5 above). It observes that in general terms the infrastructure interface dimensions of the Proposed Development have been managed well.
- 6.3.9. Whilst the BritNed project was not specifically identified in the Applicant's CEA, the BritNed developer was accorded an opportunity to participate in the Examination as an OP. No substantive adverse impacts between the Proposed Development and the BritNed project were raised. However, BritNed have requested that measures to avoid harm to their work-site or infrastructure from anchoring vessels associated with wind farm construction should be considered by the Applicant. This is a reasonable request. However, BritNed did not take this further by (for example) seeking the inclusion of protective provisions in the dDCO.
- 6.3.10. The ExA does not consider it appropriate to recommend the drafting and inclusion of protective provisions in relation to the relatively limited potential interface between the Proposed Development and a possible BritNed work site and operational area at 3km distant from the Order land, particularly where no such provisions were requested. However, if the DCO were to be granted, the ExA recommends that the Applicant should engage with BritNed to further scope and assess possible interaction between the two projects, identifying any that might require formal management in the documentation of either or both projects. The ExA considers that appropriate provision to manage possible construction interfaces between the Proposed Development and BritNed could if necessary be included in the offshore Construction Method Statements secured in DMLs conditions 13(c) (Sch 11 (now 10) Generation Assets) and 11(d) (Sch 12 (now 11) Export Cable System), but this can be conducted by agreement between the BritNed undertaker and the TOWF undertaker without a requirement for formal security.
- 6.3.11. Until a scoping review has been carried out, it is not necessary or possible to specify what (if any) provisions might need to be included in the Construction Method Statements to manage the interface between these two projects. It is possible that for reasons including a temporal separation between the construction phases of the projects, or as a consequence of matters emerging from the detailed construction programmes for either or both projects, that detailed interface management provisions would not be required. On this basis, the ExA does not recommend any change to the drafting of either DML (and nor strictly is any amendment required as relevant content can be included in Construction Method Statements without amendment to the DMLs). However, this issue is flagged for the attention of the Applicant, BritNed and the MMO prior to the finalisation and discharge of the DML conditions regulating the Construction Method Statements.

- 6.3.12. Other than matters arising from BritNed, the ExA is content that there are no other matters relative to cumulative impacts or impacts between the Proposed Development and other major projects or proposals, either onshore or offshore, that have not been adequately addressed in the design of the Proposed Development, in protective provisions or agreed between the parties.

## **Conclusion on Other Infrastructure**

- 6.3.13. This section sets out the ExA's conclusions on the effects of the Proposed Development on other major infrastructure. Taking all relevant evidence and policies into account, the ExA has found as follows.
- With the exception of the BritNed project, all cumulative effects and interfaces between the Proposed Development and other major projects, proposals and infrastructures have been well managed.
  - If the DCO is granted, the Applicant, BritNed and the MMO are recommended to review the possible need for interface guidance on the relationship between the Proposed Development and the BritNed project, prior to the approval of Construction Method Statements under either DML (and for inclusion of provisions as required into the Construction Method Statements).
  - This issue is neutral for the purposes of the planning balance.

## **6.4. SOCIO-ECONOMIC EFFECTS**

### **Introduction**

- 6.4.1. This section considers the socio-economic effects of the Proposed Development on the following industries, for which the Examination received the majority of submissions and evidence:
- shipping, navigation and ports; and
  - commercial fishing and fisheries.
- 6.4.2. It should be noted that whilst the Applicant (in the ES) and the ExA in Examination have had regard to socio-economic effects arising in relation to recreational boating and fishing, these were not matters that were raised in submissions as giving rise to any material adverse effects.
- 6.4.3. Similarly, and in relation to a wide range of onshore and offshore activities giving rise to economic effects, including the provision of labour to the OWF for construction and maintenance and effects in relation to tourism, there were few representations and no concern in relation to material adverse effects. The economic effects of construction and maintenance are an acknowledged positive benefit of the Proposed Development.

### **Policy Considerations**

- 6.4.4. In terms of socio-economic effects at the national scale, Parts 2 and 3 of NPS EN-1 place strong emphasis on the need to replace aging energy



infrastructure and decarbonise the energy supply sector whilst meeting the national need for generating facilities, delivering security of energy supply and a sustainable energy sector. NPS EN-1 paragraphs 3.1.1 – 4 emphasise that UK's energy planning framework encourages developers to make specific proposals within the policy framework and for the decision maker then to assess all such proposals on the basis that the Government has assessed the need for such development at considerable scale and urgency. The SoS *'should give substantial weight to the contribution which projects would make towards satisfying this need...'*, a policy position which makes clear that when economic impacts are being balanced at the national level, substantial weight should be given to the achievement of the energy generation objectives in NPS EN-1.

6.4.5. NPS EN-1 paragraph 5.12.1 identifies that 'the construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at local and regional levels.' Paragraph 5,12.6 requires the SoS to have regard to potential socio-economic impacts identified by Applicants and 'from any other sources that the [SoS] considers to be both relevant and important to its decision.' Paragraph 5.12.7 cautions against the weighting of asserted socio-economic impacts 'that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS).' Paragraph 5.12.8 requires the SoS to consider 'any relevant positive provisions the developer has made or is proposing to make to mitigate impacts', together with options for phasing and legacy benefits (where relevant).

6.4.6. NPS EN-3 addresses socio-economic considerations with reference to affected social and economic sectors. In relation to navigation and shipping, paragraphs 2.6.162 – 3 provide that:

*[t]he [SoS] should be satisfied that the site selection has been made with a view to avoiding or minimising disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, lifeline ferries and recreational users of the sea. Where a proposed development is likely to affect major commercial navigation routes, for instance by causing appreciably longer transit times, the IPC should give these adverse effects substantial weight in its decision making. There may, however, be some situations where reorganisation of traffic activity might be both possible and desirable when considered against the benefits of the wind farm proposal. Such circumstances should be discussed with the MCA and the commercial shipping sector and it should be recognised that alterations might require national endorsement and international agreement and that the negotiations involved may take considerable time and do not have a guaranteed outcome.*

*'Where a proposed offshore wind farm is likely to affect less strategically important shipping routes, a pragmatic approach should be employed by the [SoS]. [...] Again, there may be some situations where reorganisation of traffic activity might be both possible and desirable when considered*

*against the benefits of the wind farm application and such circumstances should be discussed with the MCA and the commercial shipping sector.'*

6.4.7. NPSP policy is an important and relevant consideration in relation to effects on NSIP ports and port development. NPSP Section 3 sets out the Government's assessment of need for new NSIP port infrastructure and is digested in the Report from paragraph 9.3.15 above. That policy (which identifies a the need for and substantial and weighty economic benefits flowing from NSIP port use and development) has been taken into account by the ExA in this section. In summary terms, the ExA identifies that it is important and relevant for a decision-maker in regard to a Proposed Development affecting existing or possible future NSIP ports to consider growth assumptions in the NPSP need case for ports and also to consider any circumstances in which development might adversely affect the economic efficiency, competitiveness or resilience of ports.

6.4.8. Section 4.3 of NPSP identifies that NSIP ports deliver substantial and weighty socio-economic benefits (paragraphs 4.3.1 – 3).

*'Ports enable international trade, including essential imports, and so contribute to enhancing gross national product. They provide opportunities for foreign direct investment. They generate tax revenues for the Exchequer and for local government.*

*'At regional and local level, economic benefits from port developments include regeneration and employment opportunities. As commercial developments, ports can also generate agglomeration effects by bringing together businesses, with varying degrees of mutual interaction, and producing economic benefits over and above those reflected in the value of transactions among those businesses.*

*'Ports can contribute to the enhancement of people's skills and of technology, as embodied in equipment used by ports and port-related activities, with wider longer-term benefits to the economy.'*

6.4.9. NPSP paragraph 4.3.5 identifies that: '[t]he decision-maker should give substantial weight to the positive impacts associated with economic development [due to ports development and operation], in line with the policy set out in this NPS.'

6.4.10. NPSP Section 4.4 identifies that '[p]orts in England and Wales operate on commercial lines, without public subsidy and with investment from their own operating profits or from the private sector investors. Port developers must therefore plan to make a commercial return from the investment being made...' (paragraph 4.4.1). Paragraph 4.4.3 is written to assist decision-makers primarily considering objections to NSIP port development from other port users adversely affected by it. However, it is of some assistance to a decision-maker considering another form of development that is suggested to have an adverse socio-economic impact on a port or port users. It suggests that 'development should be considered in the light of the proposal from the applicant to mitigate those impacts.'

- 6.4.11. Paragraph 5.14.3 of NPSP, whilst considering the effects of port development on other uses (as distinct from the effects of other use and development on other uses on ports), re-emphasises that NSIP ports amongst other benefits:
- create jobs and training opportunities; and
  - support local services and improvements to local infrastructure.

## **The Applicant's Case**

- 6.4.12. Volume 3 Chapter 3 [[APP-059](#)] of the ES considers general social and economic impacts. The development process itself is identified as a source of economic and social benefit through investment and jobs flowing from a capital expenditure of £748.3 million. A range of economic effects arising from construction through sourcing assumptions from as low as 1% of sourcing within the Kent study area and 2% within the UK (low impact scenario) via 6% in Kent and 31% in the UK (middle impact scenario) to 9% in Kent and 56% in the UK (high impact scenario) are set out (section 3.11).
- 6.4.13. Operational economic effects are suggested as including annual sourcing expenditure (including labour costs) £18.7 million per annum across the same range of assumptions are recorded from as low as 1% of sourcing within the Kent study area and 13% within the UK (low impact scenario) via 8% in Kent and 49% in the UK (middle impact scenario) to 17% in Kent and 65% in the UK (high impact scenario) are set out ([[APP-059](#)] section 3.12).
- 6.4.14. The Applicant concludes that across a balance of minor beneficial and minor adverse social and economic effects, the aggregate cumulative social and economic effect across all receptors, allowing for mitigation is negligible ([[APP-059](#)] table 3.43).
- 6.4.15. Volume 3 Chapter 4 [[APP-060](#)] of the ES considers tourism and recreational effects. A wide range of onshore and offshore tourist and recreation activities in the locality was studied, with more immediate effects being identified in relation to the use of Pegwell Bay Country Park, Stonelees Nature reserve and Public Rights of Way in the area affected by onshore works and boat access to the River Stour identified as a maritime effect. Effects on views relevant to tourism and recreation were also identified but these are addressed primarily through the Historic Environment, LVIA and SLVIA processes, separately addressed in the ES and in this Report (Sections 5.4 and 5.5 above).
- 6.4.16. All relevant effects are documented as minor adverse or lower during the construction, operation and decommissioning phases, once mitigation is applied. This work was substantially unchallenged in the Examination.
- 6.4.17. Volume 2 Chapter 9 (commercial fisheries) [[APP-050](#)], Volume 2 Chapter 10 (shipping and navigation) [[APP-051](#)], Volume 2 Chapter 12 (SLVIA) [[APP-053](#)], Volume 3 Chapter 2 (LVIA) [[APP-058](#)] and Volume 3 Chapter 7 (Historic Environment) [[APP-063](#)] include content relevant to consideration and assessment of social and economic effects more

broadly. The Applicant's case in respect of these can be found summarised in Chapters 6.2, 5.2, 5.4 and 5.5 above.

## **Planning Issues**

6.4.18. The important and relevant social and economic effects of the Proposed Development are formed from a complex of factors summarised as follows:

- construction effects offshore and onshore, arising from capital expenditure on construction and related employment;
- construction effects onshore arising from disruption to existing businesses and communities and the use of community facilities;
- operational effects arising from employment and maintenance activities;
- construction and operational effects on shipping and ports;
- construction and operational effects on fishing and fisheries;
- broader onshore effects including tourism.

### **Construction effects offshore and onshore: construction and related employment**

6.4.19. The effects of the Proposed Development in terms of offshore and onshore expenditure and employment were not disputed by the IPs and OPs.

### **Construction effects onshore: disruption to existing businesses, communities and facilities**

6.4.20. The aggregate effects outline in the ES were not disputed. However, individual adverse effects were raised in respect of proposals to subject commercial land to CA. The detailed effects of these matters are addressed in Chapter 10 below. Effects on a small number of residential receptors would arise on the hamlet of Ebbsfleet – mainly relevant construction and operational noise considered above in Sections 5.6 and 5.7. However, no detailed objections to the proposed development arose from Ebbsfleet residents.

### **Operational effects: employment and maintenance**

6.4.21. The aggregate effects described in the ES were not disputed by the IPs and OPs.

### **Construction and operational effects: shipping and ports**

6.4.22. The shipping and port effects placed before the ExA divide into three main sets of considerations for economic purposes:

- effects on passing shipping traffic (in the main international traffic transiting the Dover Strait into and out of the North Sea);
- effects on shipping accessing the Thames estuary and major regional ports; and
- effects on local shipping and ports facilities and services.

- 6.4.23. Effects on passing shipping traffic and on shipping accessing the Thames estuary are addressed in Chapter 5.2 of this report, and this section adopts the statement of planning issues and the key findings set out there. In summary terms, those findings are that the Proposed Development has limited effects on passing shipping traffic moving through the Dover Strait, but that it has major and weighty adverse effects on shipping accessing the Thames estuary from the south and particular via the inshore route.
- 6.4.24. It should be noted that effects on access to and facilities within the Thames estuary do not arise within the territory of the host local planning authorities, DDC and TDC. On this basis, there are few relevant matters arising from LIRs or the Development Plan that require to be considered.
- 6.4.25. DDC LIR [[REP1-091](#)] at paragraph 2.4.2 identifies the location of the proposed substation site in the Port of Richborough, but does not identify this as giving rise to any adverse effect or concern in relation to port operations. TDC LIR [[REP1-128](#)] considers shipping impacts generally to be 'neutral' (paragraph 14.1). Referring to the Port of Ramsgate (paragraphs 12.2 – 3), TDC identifies positive economic benefits for that Port arising from construction and maintenance activities and associated employment, in compliance with draft (2019) Local Plan Policy SP02. KCC raises no relevant issues.

#### **Construction and operational effects: fishing and fisheries**

- 6.4.26. In relation to socio-economic effects on commercial fisheries and fishing, paragraphs from 6.2.2 of this Report set out relevant policy from NPS EN-3, which has been considered but is not repeated here.
- 6.4.27. The local authorities LIRs (DDC, TDC and KCC) raise no issues in relation to fishing and fisheries effects. Nor more broadly do KCC or DDC raise any other economic concerns.

#### **Tourism and other social and economic effects**

- 6.4.28. TDC LIR [[REP1-128](#)] specifically notes that it is unable to quantify the onshore tourism effects of the Proposed Development.

### **ExA Response**

#### **Construction effects offshore and onshore: construction and related employment**

- 6.4.29. Noting the Applicant's case and the absence of challenge to it, the effects of the Proposed Development in terms of offshore and onshore construction-related expenditure and employment are minor positive but in cumulative terms negligible social and economic effects of the Proposed Development.

#### **Construction effects onshore: disruption to existing businesses, communities and facilities**

6.4.30. Effects on business are considered in Chapter 10 below.

#### **Operational effects: employment and maintenance**

6.4.31. The operational economic effects arising from employment and maintenance were not the subject of any detailed objections from IPs and OPs. The ExA accepts the broad conclusion in the ES that these are minor positive but in cumulative terms negligible social and economic effects of the Proposed Development.

#### **Construction and operational effects: shipping and ports**

6.4.32. Section 5.2 above makes detailed findings on shipping and ports effects, including economic effects and these are carried forward to the conclusion of this section.

#### **Construction and operational effects: fishing and fisheries**

6.4.33. Section 6.2 above makes detailed findings on fisheries and fishing effects, including economic effects and these are carried forward to the conclusion of this section.

#### **Tourism and related social and economic effects**

6.4.34. Tourism and related socio-economic effects are accepted as being minor adverse as assessed within the ES.

### **Conclusion on Socio-economic Effects**

6.4.35. This section sets out the ExA's conclusions on the socio-economic effects of the proposed development. Taking all relevant evidence and policies into account, the ExA has found as follows.

- Offshore and onshore construction would generate economic benefits arising from the manufacturing and installation of the OWF and related onshore facilities, but these are negligible in cumulative terms.
- There would be some disruption to existing businesses onshore, primarily during the construction period but also during operation. Due to the approach taken to site selection and design and consequent approach to CA (see Chapter 10), it is not clear that adverse effects to local business affected by construction and operation have been mitigated to the extent reasonably feasible.
- There would be disruption during construction to a limited number of local residents in the hamlet of Ebbsfleet. These effects are adverse but have been reasonably mitigated and the residual effects are considered to be policy compliant.
- Economic effects on shipping and ports are considered in Section 5.2. A relevant finding carried forward from that chapter is that the Proposed Development would lead to some diversion of shipping traffic, increased steaming time for some ships and decreased flexibility of access to pilot services, particularly for larger vessels in poor metocean conditions. These effects would reduce the efficiency, flexibility and resilience of port operations accessed from the Thames

estuary. As is fully described in that section, these have not been mitigated and are in breach of policy.

- The ExA does not consider that the Applicant has adequately valued the economic harms arising:
  - from reductions in the flexibility, efficiency, cost effectiveness, competitiveness and resilience of major port facilities serving London;
  - to ships and shipping lines; and
  - to pilotage services.

As is common in transport-related spatial and economic planning considerations, a number of relatively small individual impacts in terms of additional passage time taken and costs for individual voyages or pilotage acts, or small numbers of additional days disrupted due to inability to provide pilotage services in poor metocean conditions, can give rise to substantial adverse effects in the aggregate.

- In relation to commercial fishing and fisheries, the ExA finds that there would be substantial disruptions to the operations and economic viability of individual fisheries and fishing vessels, primarily during construction but also on an enduring basis during operation.
- The construction and maintenance of the Proposed Development would also generate additional commercial and employment opportunities for vessel operators including fishermen in the Thanet area.
- The preparation by the Applicant of the Fisheries Liaison and Co-existence Plan to be certified by the SoS [[REP3-060](#)], which is also secured in the DMLs demonstrates a generally positive relationship with the fishing community, focussed on the securing of net social and economic benefit for that community from the development.
- The ExA views tourism and other social and economic effects of the Proposed Development onshore as neutral.
- Taken together, the socio-economic effects of the Proposed Development are net negative.

## **6.5. OTHER EFFECTS**

6.5.1. This section considers the effect of the Proposed Development in terms of:

- onshore planning and land-use considerations not otherwise considered in the remainder of this Report;
- marine planning and management considerations not otherwise considered in the remainder of this Report;
- duties place on the SoS under The Infrastructure Planning (Decisions) Regulations 2010;
- compliance with the Public Sector Equality Duty (PSED); and
- human rights considerations (other than those raised in connection with the Applicant's seeking of CA and/ or TP powers in the Order, which are considered in Chapter 10).

## ExA Response

- 6.5.2. The ExA has paid regard to all other applicable NPS policy (from NPS EN-1 and EN-3). Other than reported above in Chapter 5 and the preceding sections of Chapter 6, all has been complied with.
- 6.5.3. The ExA has paid regard to all other potentially relevant considerations arising from other NPSs (NPS EN-5 and NPSP). Other than matters reported on above in Chapter 5 and the preceding sections of Chapter 6, there are no additional considerations that the ExA considers to be important and relevant.
- 6.5.4. The ExA has paid regard to relevant provisions of The Infrastructure Planning (Decisions) Regulations 2010<sup>173</sup>.
- Listed buildings, conservation areas and scheduled monuments (Regulation 3)<sup>174</sup>
    - The Proposed Development does not directly affect any listed buildings onshore. The ExA notes the presence of listed buildings onshore and that the Proposed Development would be theoretically visible within the settings of these. Having given careful consideration to the desirability of preserving the setting of these assets, the ExA advises that the visibility of the Proposed Development from their settings would not harm those settings and so the SoS would be able to decide to make the Order in compliance with the duty in Reg 3(1).
    - The Proposed Development does not directly affect any Conservation Areas onshore. The ExA notes the presence of Conservation Areas onshore and that the Proposed Development would be theoretically visible within the settings of these. HistE has identified limited harm to the setting of Margate Conservation Area. The ExA has had regard to the desirability of preserving or enhancing the character or appearance of that area and notes that in circumstances where the harm is minor, to the setting only (not directly to the Conservation Area) and where the setting already contains a diverse range of contemporary structures including offshore WTGs, on balance the ExA concludes that whilst the character and appearance of the Conservation Area would not be enhanced, it would be preserved. The SoS would be able to decide to make the Order in compliance with the duty in Reg 3(2) on this basis.
    - The Proposed Development does not directly affect any Scheduled Ancient Monuments onshore. The ExA notes the presence of Scheduled Ancient Monuments onshore and that the Proposed Development would be theoretically visible within the settings of

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<sup>173</sup> It should be noted that effects recorded here are set out in summary to assist the SoS' considerations are required by the The Infrastructure Planning (Decisions) Regulations 2010. They are not additive to the performance of the Proposed Development in the policy terms or in the planning balance.

<sup>174</sup> See also context provided in Section 5.5 above.



these: particular regard has been had to Richborough Roman Fort and Reculver Towers. The ExA has had regard to the desirability of preserving Scheduled Ancient Monument settings and has concluded that the Proposed Development whilst theoretically visible, would not harm the settings of any Scheduled Ancient Monument. The SoS would be able to decide to make the Order in compliance with the duty in Reg 3(3) on this basis.

- Deemed consents under MACAA2009 (Regulation 3A) <sup>175</sup>
  - The ExA has had regard to the need to protect the environment (Regulation 3A (2)(a)) and human health (Regulation 3A (2)(b)) and concludes that, subject to relevant mitigation discussed above, The SoS would be able to decide to make the Order in compliance with these duties.
  - The ExA has had regard to the need to prevent interference with legitimate uses of the sea (Regulation 3A (2)(c)). For reasons set out fully in Section 5.2 above, the ExA has concluded that the application as materially changed and examined would not reduce navigational risk to ALARP and has not sufficiently mitigated adverse economic effects to shipping, pilotage and ports. In the ExA's view, a decision having regard to this duty is recommended to be a decision by the SoS not to make the Order.
- **Biological diversity** (Regulation 7) <sup>176</sup>

The ExA has had regard to the UNEP Convention on Biological Diversity of 1992 and confirms that the Proposed Development meets the UK's obligations under the convention. The SoS would be able to decide the application in compliance with the duty in Reg 7 on this basis.

6.5.5. The ExA has paid regard to the PSED. The ExA is content that the Proposed Development would not harm any protected characteristic relevant to the discharge of that duty. On that basis, the SoS can decide to make the Order in compliance with the PSED.

6.5.6. The ExA has paid regard to the European Convention on Human Rights and the Human Rights Act 1998. Other than as addressed in relation to CA and/ or TP in Chapter 11 below, the ExA is satisfied that no rights are engaged.

## Conclusion on Other Effects

6.5.7. The section sets out the conclusion of the ExA on other effects. Taking all relevant evidence and policies into account, the ExA finds as follows.

- All other matters arising from legal duties on the decision-maker, from policy and important and relevant considerations have been taken into account.

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<sup>175</sup> See also context provided in Section 5.2 above.

<sup>176</sup> See also context provided in Section 5.3 above.

- In general terms no other matters give rise to any indication specifically for or against the making of the DCO. However, the SoS must have regard to the need to prevent interference with legitimate uses of the sea under Reg 3A (2)(c) of The Infrastructure Planning (Decisions) Regulations 2010 and, bearing in mind the conclusions in Section 5.2 above, the ExA advises the SoS that such interference has not been prevented.
- In general terms, the matters considered in this section are neutral considerations in the planning balance.
- However, the failure of the application to prevent interference with legitimate uses of the sea under Reg 3A (2)(c) of The Infrastructure Planning (Decisions) Regulations 2010 is a negative consideration.

## **7. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT (EUROPEAN SITES WITHIN THE UK)**

### **7.1. INTRODUCTION**

7.1.1. This chapter of the Report sets out the ExA's analysis, findings and conclusions relevant to Habitats Regulations Assessment (HRA) for European sites<sup>177</sup> in the UK. This aims to assist the SoS, as the Competent Authority in performing duties under the Habitats Directive and the Birds Directive, as transposed in the UK through the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations') and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (the 'Offshore Marine Regulations')<sup>178</sup>, jointly referred to as Habitats Regulations Assessment (HRA).

7.1.2. The Habitats Directive and the Birds Directive provide for the establishment and protection of a network of protected sites (Natura 2000 sites) and species throughout the European Union. HRA refers to such sites only within the jurisdiction of the UK. Chapter 8 of this Report addresses the Applicant's assessment and examination of issues relating to impacts from the Proposed Development on Natura 2000 sites outside of the UK.

### **7.2. POLICY AND LEGISLATIVE CONTEXT**

7.2.1. Section 4.3 of NPS EN-1 specifies the approach that should be taken by the decision-maker in relation to the Habitats Regulations. Consent for the Proposed Development may only be granted if, having assessed the potential adverse effects the Proposed Development could have on European sites, the Competent Authority considers that it meets the requirements stipulated in the Habitats Regulations.

7.2.2. The SoS is the Competent Authority for the purposes of the Habitats Directive, the Habitats Regulations and the Offshore Marine Regulations for energy applications submitted under the PA2008 regime. Natural

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177 The term European sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, possible SACs, Special Protection Areas (SPAs), potential SPAs, Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above. For a full description of the designations to which the Habitats Regulations apply, and/or are applied as a matter of Government policy, see the Planning Inspectorate Advice Note 10.

178 The Offshore Marine Regulations apply beyond UK territorial waters (12 nautical miles (nm)). These regulations are relevant when an application is submitted for an energy project in a renewable energy zone (except any part in relation to which the Scottish Ministers have functions).

England (NE) and the Joint Nature Conservation Committee (JNCC) are the relevant Statutory Nature Conservation Bodies (SNCBs).

- 7.2.3. The ExA has been mindful throughout the Examination of the need to ensure that the SoS has sufficient information to enable discharge of the duties of the Competent Authority. In this regard, the ExA has reviewed and examined the evidence presented during the Examination concerning likely significant effects (LSE) and adverse effects on integrity (AEoI) of European sites potentially affected by the Proposed Development, both alone and in-combination with other plans or projects.
- 7.2.4. The ExA prepared a report on the Implications for European Sites (RIES) [[PD-018](#)] during the Examination, with support from the Planning Inspectorate's Environmental Services Team. The purpose of the RIES was to compile, document and signpost information submitted by the Applicant and Interested Parties (IPs) during the Examination (up to Deadline 5A of the Examination, 3 May 2019) on the potential effects to European sites. The RIES was published on the Planning Inspectorate's website on 14 May 2019. Consultation on the RIES was undertaken between 14 May 2019 and 28 May 2019. This process may be relied on by the SoS for the purposes of Regulation 63(3) of the Habitats Regulations.
- 7.2.5. Comments on the RIES were received from the Applicant [[REP6-037](#)] and NE [[REP6-095](#)] and have been taken into account in this chapter of the Report. The RIES is not updated following consultation. This chapter of the Report addresses any matters that arose after the end of the consultation period of the RIES.

### **7.3. EUROPEAN SITES WITHIN THE UK AND THEIR QUALIFYING FEATURES**

- 7.3.1. The Proposed Development is not connected with, or necessary to, the management for nature conservation of any of the European sites considered within the Applicant's assessment.
- 7.3.2. The application site (specifically, the proposed cable route) crosses part of the Thanet Coast SAC, the Thanet Coast and Sandwich Bay SPA and the Thanet Coast and Sandwich Bay Ramsar site. There is also a spatial overlap between the proposed array area boundary and the Southern North Sea SAC. There is no overlap between the application site and any other European site.
- 7.3.3. The Applicant identified European sites which could be affected by the Proposed Development using study areas for each receptor group concerned (Section 7.3, [[REP2-018](#)] [[REP2-019](#)]). The study areas used are as follows:
- Subtidal and intertidal benthic habitats:
    - European sites with a physical overlap with the application site; and

- European sites within the maximum range of relevant effect (defined as up to 14km from the application site).
- Marine mammals:
  - European sites with harbour seal as a qualifying feature - 120km from the application site;
  - European sites with grey seal as a qualifying feature - 145km from the application site; and
  - European sites with harbour porpoise as a qualifying feature - 26km from the application site.
- Onshore biodiversity:
  - all European sites within 2km of the application site; and
  - onshore European sites of ornithological importance, up to 20km from the application site.
- Offshore ornithology:
  - European sites within the proposed array area and a 4km buffer around it.

7.3.4. The Applicant identified potential LSEs alone or in-combination with other plans or projects on 13 European sites as listed below:

- Thanet Coast SAC;
- Margate and Long Sands SAC;
- Thanet Coast and Sandwich Bay SPA;
- Thanet Coast and Sandwich Bay Ramsar site;
- Southern North Sea SAC;
- Outer Thames Estuary SPA;
- Flamborough and Filey Coast SPA;
- Northumberland Marine SPA;
- Farne Islands SPA;
- St Abb's Head to Fast Castle SPA;
- Foulness (Mid-Essex Coast Phase 5) SPA;
- Alde-Ore Estuary SPA; and
- Alde-Ore Estuary Ramsar site.

7.3.5. The locations of these European sites relative to the application site are illustrated on Figures 9.1 – 9.5 and 9.10 - 9.17 of the RIAA [[REP2-018](#)] [[REP2-019](#)]. Summary information in respect of these sites is provided in Chapter 9 of the Applicant's HRA report [[REP2-018](#)] [[REP2-019](#)] and accompanying matrices [[REP2-004](#)], including their approximate distances to the application site and their qualifying features.

7.3.6. Effects are not reported in this Chapter for the Flamborough Head and Bempton Cliffs SPA or the Flamborough and Filey Coast potential SPA (pSPA). The Flamborough and Filey Coast SPA has now been confirmed as such and this is reflected in the Applicant's revised RIAA [[REP2-018](#)] [[REP2-019](#)] and revised matrices [[REP2-004](#)]. This point was also addressed by NE and the Applicant in response to the ExA's first written questions (ExQ1) (Q1.1.42, [[REP1-024](#)] and [[REP1-116](#)] respectively). NE confirmed that *'The applicants have identified this within the Report to*

*Inform Appropriate Assessment and as the site is treated equally, as if it was fully designated or not, there should be no implications on the assessment or conclusions the applicants have reached’ [REP1-116].*

- 7.3.7. Similarly, effects are not reported for the Southern North Sea candidate SAC (cSAC). Effects are reported instead for the Southern North Sea SAC, which was formally designated in February 2019 (during the Examination).
- 7.3.8. NE noted that it had substantial discussions with the Applicant (before Landfall Option 2 was removed from the Proposed Development, as detailed below) as to whether the correct qualifying features of the Thanet Coast and Sandwich Bay SPA and Ramsar site had been identified and whether saltmarsh habitat in this area was supporting the qualifying features [REP6-095]. Impacts to saltmarsh habitat are discussed further later in this Chapter. There have been no other concerns raised by IPs during the Examination in relation to the Applicant’s identification of relevant European sites and qualifying features for inclusion in their assessment.
- 7.3.9. NE has agreed that the Applicant has identified all relevant features of the European sites that may be affected by the Proposed Development (Table 3, [REP6-015] [REP6-016])
- 7.3.10. The Applicant has identified potential impacts on Natura 2000 sites in other European Economic Area (EEA) States (section 13 [REP2-018] [REP2-019] and recorded in HRA Matrices [REP2-004]). Transboundary impacts on Natura 2000 sites in other EEA states are considered further in Chapter 8 of this Report.
- 7.3.11. The ExA is satisfied that the Applicant has correctly identified all of the relevant European sites and the relevant qualifying features for consideration within the HRA.

## **7.4. THE APPLICANT’S ASSESSMENT**

- 7.4.1. The Applicant undertook an initial HRA screening exercise which is reported in [APP-032] and in the screening matrices [APP-033], which were superseded by REP2-004]. The Applicant subsequently revisited the conclusions of [APP-032] and updated these where relevant, as reported in Section 7 of the RIAA [REP2-018] [REP2-019]. The European sites and qualifying features considered in the Applicant’s screening exercise are listed in Annex 1 of the RIES [PD-018].
- 7.4.2. The Applicant concluded that there was potential for LSE, either alone or in-combination with other plans or projects, on 13 European sites (listed above). As such, the Applicant provided with the DCO application a Report to Inform an Appropriate Assessment (RIAA), concluding that there would be no AEOI of any European site, either alone or in-combination with other plans or projects [APP-031]. Accompanying screening and integrity matrices were provided in [APP-033, superseded by REP2-004].

## Changes to the Proposed Development during the Examination

- 7.4.3. When the DCO application was submitted, there were three options for the installation of cables at the landfall location (all within the Pegwell Bay Country Park). Landfall Options 1, 2 and 3 are described in paragraphs 1.3.3 and 1.5.6 – 1.5.9 of [APP-057].
- 7.4.4. Concerns over the proposed Landfall Option 2 were raised by a number of IPs as part of their RRs, including Kent County Council [RR-038], the Environment Agency (EA) [RR-043], Kent Wildlife Trust (KWT) [RR-048], NE [RR-053] and the RSPB [RR-057]<sup>179</sup>. Following these comments and in response to questions from the ExA [PD-012], at Deadline 1, the Applicant elected to remove Landfall Option 2 from the DCO application [REP1-014].
- 7.4.5. In light of this, the Applicant provided a revised RIAA [REP2-018] [REP2-019] at Deadline 2, superseding [APP-031]. The removal of Landfall Option 2 is set out in Section 1.3 and Tables 4.1 and 4.2 of the revised RIAA [REP2-018] [REP2-019]. Revised screening and integrity matrices [REP2-004] were also submitted to the ExA at Deadline 2, superseding those presented as part of the application documents [APP-033]. NE subsequently agreed that the removal of the Landfall Option 2 had addressed its key concerns with regard to landfall designs [Table 3, REP6-019 and REP6-095]. Similarly, KWT [REP3-038] and the EA [REP3-036] welcomed the removal of Landfall Option 2.
- 7.4.6. The removal of Landfall Option 2 was discussed during Issue Specific Hearing (ISH) 3 [EV-026] and the Applicant held a position that the removal should be considered a non-material change to the description of the Proposed Development [REP1-014]. The ExA received no submissions disagreeing with that position and the Examination proceeded on the basis that Landfall Option 2 has been removed (see Section 2.2 above). For clarity, references to the Proposed Development within this Report relate to the project description excluding Landfall Option 2.
- 7.4.7. At Deadline 1, the Applicant submitted a revised dDCO [revision A, REP1-068] which included the Cable Exclusion Zone (CEZ)<sup>180</sup> as a condition in the deemed marine licence (DML) for transmission assets. The CEZ, as presented as part of the original application in paragraph 1.3.7 of [APP-042], is intended to ensure that no cabling is undertaken within the Thanet Coast SAC and was reflected in the revised RIAA submitted at Deadline 2 [REP2-018] [REP2-019]. For clarity, references to the Proposed Development within this Report relate to the project description including the CEZ. The CEZ is included in schedule 12, part 4 (condition 21) of the

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<sup>179</sup> The RSPB's RR [RR-057] explained that it comprised the RSPB's final submission to the Examination. No further substantive submissions from the RSPB were provided.

<sup>180</sup> Referred to as a 'Cable Exclusion Zone' in the dDCO and as a 'Cable Exclusion Area' in [APP-042] and in the RIAA; the ExA understands these to be one and the same. For consistency purposes, the term 'Cable Exclusion Zone' has been used throughout this Report, in the RIES and the accompanying matrices [PD-018].

Applicant's final dDCO [REP8-013] and shown on the final submitted offshore works plan [REP8-023].

- 7.4.8. At Deadline 4 of the Examination the Applicant requested a material change to the Proposed Development, to include a Structures Exclusion Zone (SEZ) to the west of the proposed offshore array area [REP4-001]. Within the SEZ, which is illustrated on Figure 1 of [REP4-018], the construction of certain structures of the Proposed Development (including wind turbine generators, any offshore substation and any meteorological mast) would not be permitted [REP4-018]. The SEZ was requested to address shipping and navigation concerns raised by IPs. At Deadline 4, the Applicant also submitted its initial review of the implications for the RIAA from the introduction of the SEZ [REP4-027].
- 7.4.9. At Deadline 4B, the Applicant expanded on this information and provided an Addendum to the RIAA [REP4B-015], which focused on the implications of the SEZ for the Outer Thames Estuary SPA. NE agreed that the only sections of the revised RIAA [REP2-018] [REP2-019] which are affected by the introduction of the SEZ (aside from the project description) are those relating to the Outer Thames Estuary SPA [REP5-064 and REP6-095]. The proposed SEZ is included in Requirement 6 and schedule 12, part 4 (condition 5) of the Applicant's final dDCO [REP7-008].
- 7.4.10. The RIAA Addendum [REP4B-015] concluded that the SEZ would not change the conclusions presented in the revised RIAA [REP2-018] [REP2-019] that there would be no AEOI of any European site, either alone or in combination with other plans or projects.
- 7.4.11. The ExA formally accepted the Applicant's SEZ material change request on 9 April 2019 [PD-014]. For clarity, references to the Proposed Development within this Report relate to the project description including the SEZ. The Applicant undertook a consultation on the proposed SEZ material change documents (including the RIAA Addendum [REP4B-015]) between 25 April 2019 and 26 May 2019. [REP6-044] presents the Applicant's SEZ material change consultation report and the ExA is satisfied that no concerns were raised in relation to HRA matters by any of the consultation bodies.

### **Potential Impacts**

- 7.4.12. The following potential impacts were screened in for LSE by the Applicant:
- 7.4.13. **Offshore** (as summarised from Table 7.3 of the RIAA [REP2-018] [REP2-019] and the Applicant's comments in [REP6-037]):
- Subtidal and intertidal benthic habitats:
    - temporary habitat loss/ disturbance;
    - increases in suspended sediments, with subsequent deposition;
    - accidental pollution;
    - changes to physical processes;
    - introduction of hard substrate; and



- Electro Magnetic Fields (EMF)<sup>181</sup>.
- Marine mammals:
  - increase in underwater noise; and
  - accidental pollution.
- Ornithology:
  - direct disturbance and displacement;
  - collision risk.

7.4.14. In paragraph 2.2.1 of the RIES (and based on the ExA's understanding of the information presented in Table 7.3 of the RIAA [[REP2-018](#)] [[REP2-019](#)]), the ExA had also identified potential for LSE from:

- Marine mammals: long-term physical loss of habitat, increases in suspended sediments and changes in prey availability and behaviour; and
- Ornithology: barrier effects and changes in prey availability and behaviour.

7.4.15. However, Table 1 of the Applicant's comments on the RIES [[REP6-037](#)] noted the Applicant's position that these effects had been screened out from LSE. In their response to the Applicant's comments on the RIES [[REP7-039](#)], NE confirmed they had no comments to make on this point.

7.4.16. **Onshore** (summarised from paragraph 7.5.37 of the RIAA [[REP2-018](#)] [[REP2-019](#)]):

- habitat loss/ disturbance;
- increases in suspended sediments and deposition;
- noise and visual disturbance;
- displacement of recreational visitors to Pegwell Bay Country Park;
- accidental pollution; and
- spread of invasive non-native species (INNS).

7.4.17. Section 8 of the RIAA [[REP2-018](#)] [[REP2-019](#)] considers LSE in-combination with other plans and projects. The plans and projects that have been included in the Applicant's in-combination assessment are listed in the following tables in the RIAA [[REP2-018](#)] [[REP2-019](#)]:

- Offshore
  - Table 8.2 – projects included in marine mammal in-combination assessment;
  - Table 8.4 – all projects identified for inclusion in the offshore in-combination assessment. Two types of projects have been considered: wind farms and offshore cables. Other types of

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<sup>181</sup> Impacts from EMF were originally screened in for LSE in Table 7.3 of [[APP-032](#)]. Following refinements to the cable route during Examination (specifically changes to the DCO to secure the CEZ), EMF was subsequently screened out for LSE. See paragraph 7.5.13 of [[REP2-018](#)] and [[REP2-019](#)].

project were discounted, as explained in paragraph 8.5.4 of the RIAA;

- Table 8.5 - offshore cable projects included in the in-combination assessment (disturbance and displacement during construction);
  - Table 8.6 - offshore wind farm projects included in the in-combination assessment (disturbance and displacement during operation and maintenance); and
  - Table 8.7 – offshore wind farm projects included in the in-combination assessment (collision risk during operation and maintenance).
- Onshore
- Table 8.8 - plans and projects identified for inclusion in the onshore in-combination assessment (habitat loss or change; displacement of recreational users; and visual or noise disturbance). All other projects have primarily been screened out of consideration in the in-combination assessment, as explained in paragraph 8.6.5 of the RIAA.

7.4.18. In Section 9 of their Deadline 6 submission (comments on RIES) [[REP6-095](#)], NE agreed that the RIAA has identified all the relevant qualifying features of the European sites that may be affected by the Proposed Development (although noted a dispute with the Applicant that was effectively resolved with the removal of 'Landfall Option 2' as described above). NE also agreed with the RIES' summation of the Applicant's conclusions regarding the consideration of the relevant qualifying features and the potential impacts for a LSE [[REP6-095](#)].

7.4.19. Table 3.1 of the RIES [[PD-018](#)] provides a summary of the European sites, qualifying features and potential impacts for which the Applicant identified a LSE.

7.4.20. The ExA is satisfied that all relevant potential impacts, including those associated with the changes to the application, have been assessed by the Applicant in the RIAA [[REP2-018](#)] [[REP2-019](#)] and RIAA Addendum [[REP4B-015](#)].

## **7.5. HRA MATTERS CONSIDERED DURING THE EXAMINATION**

7.5.1. The main HRA matters raised by the ExA, NE and other IPs and discussed during the Examination included:

- the Applicant's initial conclusion that accidental pollution events would not result in LSE (due to reliance on in-built mitigation measures), in light of the European Court of Justice ruling in '*People Over Wind and Peter Sweetman v Coillte Teoranta*';
- permanent loss of saltmarsh under Landfall Option 2 and resultant impacts on the Thanet Coast and Sandwich Bay SPA and Ramsar site;
- impacts to the chalk reef qualifying feature of the Thanet Coast SAC;
- in-combination effects with other dredging and disposal activities on subtidal and benthic intertidal habitats, particularly in relation to the

- Thanet Coast SAC;
- construction noise effects on the harbour porpoise qualifying feature of the Southern North Sea SAC (alone and in-combination) and reliance on mitigation measures including Outline Site Integrity Plans (SIPs) to support conclusions in the assessment of AEOI;
- in-combination assessment of displacement impacts (particularly in relation to the red-throated diver qualifying feature of the Outer Thames Estuary SPA); and
- in-combination collision risk modelling (particularly in relation to mortality of kittiwake and gannet of the Flamborough and Filey Coast SPA).

7.5.2. These matters are discussed in Sections 7.6 and 7.7 of this Report, as appropriate.

## **7.6. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS**

7.6.1. The Applicant undertook its initial HRA screening exercise as part of its PEIR, which is reported in [[APP-032](#)] and in the screening matrices [[APP-033](#), superseded by [REP2-004](#)]. The Applicant subsequently revisited the conclusions of [[APP-032](#)] and updated these where relevant, as reported in Section 7 of the RIAA [[REP2-018](#)] [[REP2-019](#)].

7.6.2. Section 8 of the Applicant's RIAA [[APP-031](#)] explains that the determination of LSE was based on the understanding of the baseline environment and the project description presented at November 2017, and that '*additional information will come forward prior to the completion of the RIAA and, if relevant, the sites and features included here for LSE may be amended based on such evidence*'. The Applicant's RIAA [[REP2-018](#)] [[REP2-019](#)] therefore presents their summary of potential for LSE (including Natura 2000 sites outside of the UK) as updated through the preparation of the RIAA after the PEIR and throughout the examination process (paragraph 7.5.69 and table 7.3).

7.6.3. The key points relating to these updates during the examination are discussed in the following paragraphs.

7.6.4. As set out above, in their comments on the ExA's RIES [[REP6-095](#)], NE agrees with the Applicant's conclusions regarding the qualifying features and the potential impacts for a LSE.

### **Removal of Landfall Option 2**

7.6.5. As discussed in paragraphs 1.3.4-1.3.9 of the RIES [[PD-018](#)] and Chapter 2 of this Report, the Applicant elected to remove Landfall Option 2 from the design envelope of the Proposed Development [[REP1-014](#)]. This responded to concerns over the proposed Landfall Option 2 raised by a number of IPs (including [[RR-038](#)], [[RR-043](#)], [[RR-048](#)], [[RR-053](#)] and [[RR-057](#)]) that Landfall Option 2 would result in the permanent loss of supporting habitat for Thanet Coast and Sandwich Bay SPA and Ramsar site.

- 7.6.6. In response to the ExA's RIES, NE made comments relating to the identification of the relevant features of the European sites that may be affected by the Proposed Development, reflecting that there had been 'considerable discussions' with the Applicant prior to the removal of Option 2. These discussions related to whether or not the correct features of the Thanet Coast and Sandwich Bay SPA and Ramsar site had been identified and whether the habitats in this area supported the designated features. NE were of the view that the saltmarsh was a supporting habitat of the SPA and Ramsar site, whereas the Applicant did not agree (paragraph 9.3.2 of [REP6-095]).
- 7.6.7. This is discussed further below in the context of the Applicant's consideration of AEOI and did not directly relate to their conclusions of LSE.

### **People Over Wind and Peter Sweetman v Coillte Teoranta**

- 7.6.8. In ExQ 1.1.3 [PD-012], the Applicant was asked to explain the apparent reliance in [APP-031] on what it described as 'embedded mitigation' in relation to pollution prevention measures for subtidal and benthic habitat, intertidal habitats, marine mammals and onshore biodiversity to rule out LSE on European sites and their qualifying features screened into the assessment. This appeared to be contradictory to the outcomes of the European Court of Justice ruling in 'People Over Wind and Peter Sweetman v Coillte Teoranta' (referred to as 'Sweetman II', as cited by the Applicant in paragraph 2.1.6 of [APP-031]).
- 7.6.9. The Applicant prepared a revised RIAA [REP2-018] [REP2-019] concluding that LSE from accidental pollution at all stages of the Proposed Development would not arise due to the control measures and mitigation in place, but that "to ensure full compliance with Sweetman II these measures have not been taken into consideration during screening on a precautionary basis". This is discussed in Tables 4.2 and 7.3 of [REP2-018] [REP2-019].
- 7.6.10. The European sites and their qualifying features affected by the revisions to the Applicant's RIAA in this regard (i.e. where LSE cannot be excluded in light of the Applicant's revised approach to the Sweetman II judgement) were set out in paragraph 3.2.6 of the RIES [PD-018].
- 7.6.11. In their response to the RIES, the Applicant noted that the list of sites and features affected by the revisions to the RIAA in this respect also included the harbour porpoise feature of both the Southern North Sea SAC and the Bancs des Flandres SCI (Natura 2000 sites located outside of the UK are considered further in Chapter 8 of this Report).

### **Implications of the SEZ**

- 7.6.12. As described in section 2 of this Report and sections 1.3.11 – 1.3.13 of the RIES [PD-018], the Applicant submitted a proposed material change to the Proposed Development, to include the SEZ. At Deadline 4B, the

Applicant provided an Addendum to the RIAA [REP4B-015]. NE agreed that the only sections of the revised RIAA [REP2-018] [REP2-019] which are affected by the introduction of the SEZ (aside from the project description) are those relating to the Outer Thames Estuary SPA [REP5-064] and the potential for AEOI in this regard. This is considered further in the following section of this Chapter.

- 7.6.13. No IPs raised any concerns around the screening for LSE in response to the Applicant's SEZ change request consultation [AS-014].

## **Summary of HRA Screening Outcomes During the Examination**

- 7.6.14. Through the screening exercise, the Applicant identified European sites and qualifying features with potential for LSE from the Proposed Development alone, as summarised in Table 7.3 of the RIAA [REP2-018] [REP2-019]. NE has agreed that the RIAA has identified all relevant features of the European sites that may be affected by the Proposed Development (Table 3, REP6-015] [REP6-016]) and that "*The screening of potential likely significant effects, sites and species in relation to Thanet Extension is adequate and appropriate*" [REP6-016]. This is also reflected in paragraph 9.4.1 of [REP6-095].
- 7.6.15. The Applicant made a series of comments in regard to table 3.1 of the RIES (European sites, qualifying features and potential impacts for which the Applicant has identified a LSE) [PD-018] in their comments on the RIES. These are presented in table 1 of [REP6-037], and are not repeated at length here, but the key points are summarised as follows (in terms of the findings of LSE, noting that many of the Applicant's comments relate to AEOI considerations):
- The 'submerged or partially submerged sea cave' feature of the Thanet Coast SAC was screened in for LSE;
  - Following the removal of Landfall Option 2, there would be no LSE from physical processes to the 'wetland invertebrate assemblage' (Ramsar Criterion 2) of the Thanet Coast and Sandwich Bay Ramsar site;
  - Barrier effects (as follows) have been screened in for LSE (but AEOI is only considered in the Applicant's integrity matrices [REP2-004] and not in the main body of the RIAA [REP2-018] [REP2-019]):
    - Outer Thames Estuary SPA – little tern and common tern;
    - Flamborough and Filey Coast SPA – gannet, kittiwake and breeding seabird assemblage;
    - St Abb's Head to Fast Castle SPA – kittiwake and breeding seabird assemblage;
    - Alde-Ore Estuary SPA - lesser black backed gull; and
    - Alde-Ore Estuary Ramsar site - Criterion 6: lesser black-backed gull.
  - The roseate tern feature of the Farne Islands SPA has been screened out for LSE on the same bases that the other tern features at this site have been screened out.

- 7.6.16. None of the Applicant's comments on table 3.1 of the RIES drew further comment from NE [[REP7-039](#)].
- 7.6.17. The ExA is therefore satisfied with the outcomes of the Applicant's LSE screening exercise and that the 13 European sites listed in paragraph 7.3.4 of this Report as having potential LSE from Proposed Development is appropriate. No IPs have raised concerns that the Proposed Development has potential for LSE on sites beyond those listed in Annex 1 of the RIES (European sites and Qualifying Features identified by the Applicant for consideration in the Screening Assessment) [[PD-018](#)].
- 7.6.18. The features of those European sites taken forward to consideration of AEOI are summarised in table 3.1 of the RIES [[PD-018](#)], subject to the additional points set out above.
- 7.6.19. In response to Q4.1.5 of the ExA's request for further information under EPR [[PD-020](#)], the Applicant provided a document listing all of their submissions into the examination that "*clarify, inform or supplement the RIAA*" [[REP6A-004](#)] (the RIAA clarification document). The ExA considers this document will be a particularly useful source of information for the SoS in making a decision and for other bodies in discharging DCO requirements and DML conditions in the future (should development consent be granted for the Proposed Development). To this end, the ExA notes that, at the Applicant's own suggestion, the RIAA clarification document [[REP6A-004](#)] refers to itself as being annexed to the EM. However, the D7 iteration of the EM contained no such annex.
- If the SoS is minded to make the Order, the ExA recommends that the RIAA clarification document [[REP6A-004](#)] should be annexed to the EM prior to certification as originally intended by the Applicant.

## **7.7. CONSERVATION OBJECTIVES**

- 7.7.1. The conservation objectives for all of the European sites taken forward to the AEOI stage and discussed in this section of the Report were provided by the Applicant in Section 9 of the RIAA [[REP2-018](#)] [[REP2-019](#)].
- 7.7.2. As discussed in section 7.3 of this Report, the Flamborough Head and Bempton Cliffs SPA and the Flamborough and Filey pSPA have been superseded by the formal designation of the Flamborough and Filey Coast SPA in August 2018, as reflected in the Applicant's revised RIAA (paragraph 7.6.5, [[REP2-018](#)] [[REP2-019](#)] and revised matrices (matrix 36 of [[REP2-004](#)])).
- 7.7.3. Similarly, the Southern North Sea SAC was formally designated in February 2019. The assessment in the RIAA is based on the draft conservation objectives for the cSAC, as set out in paragraph 9.6.9 [[REP2-018](#)] [[REP2-019](#)]. The ExA is aware that the conservation objectives for the Southern North Sea SAC became available on JNCC's website in March 2019, subsequent to submission of the revised RIAA [[REP2-018](#)] [[REP2-019](#)].

- 7.7.4. In response to Question 2.1.9 of the ExA's Second Written Questions (ExQ2) [PD-016], NE stated that it did not consider there to be any fundamental effects for the Examination resulting from the Southern North Sea SAC being formally designated [REP5-065]. Similarly, the Applicant stated that the formal designation did not affect the existing conclusions of the RIAA [REP5-065].
- 7.7.5. In a number of instances relating to the other European sites considered for AEoI, NE has published updated versions of the conservation objectives documents cited in the revised RIAA [REP2-018] [REP2-019]. For example, whilst the revised RIAA references conservation objectives for Thanet Coast SAC '*as made in 2014*', an updated version of the conservation objectives was published on NE's website in November 2018. This applies to the following European sites considered in the RIAA [REP2-018] [REP2-019]:
- Thanet Coast SAC;
  - Margate and Long Sands SAC;
  - Thanet Coast and Sandwich Bay SPA;
  - Outer Thames Estuary SPA;
  - Flamborough and Filey Coast SPA;
  - Northumberland Marine SPA;
  - Farne Islands SPA;
  - Foulness (Mid-Essex Coast Phase 5) SPA; and
  - Alde-Ore Estuary SPA.
- 7.7.6. The ExA understands that the updated conservation objective documents reflect the consolidation of the Habitats Regulations in 2017 and do not fundamentally alter the conservation objectives of the European sites. This position was set out in paragraphs 4.1.4 – 4.1.5 of the RIES [PD-018], and no comments were received from NE or any other IPs to suggest this is not the case.
- 7.7.7. The ExA is therefore content that sufficient information has been provided in respect of the conservation objectives for the relevant European sites such as to inform any appropriate assessment undertaken by the SoS as the Competent Authority.

## **7.8. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY**

- 7.8.1. As described above, the Applicant considered that LSE could not be ruled out in relation to 13 European sites.
- 7.8.2. Paragraph 4.2.3 of the RIES [PD-018] explains that, although several matters relating to conclusions around AEoI of European sites were discussed during the Examination (considered on a site-by site basis in the following sections of this Chapter), some of the Applicant's conclusions around AEoI were undisputed by IPs during the Examination.
- 7.8.3. Table 4.1 of the RIES [PD-018] summarised the position in terms of the sites and level of agreement of with the Applicant's conclusions, and that

the AEOI for the following sites (alone and in-combination) had not been disputed (references to Applicant's integrity matrices are to [\[REP2-004\]](#)):

- Alde-Ore Estuary SPA (matrix 34);
- Alde-Ore Estuary Ramsar (matrix 35);
- Farne Islands SPA (matrix 38);
- Foulness (Mid-Essex Coast Phase 5) SPA (matrix 33);
- Margate and Long Sands SAC (matrix 25);
- Northumberland Marine SPA (matrix 37); and
- St Abb's Head to Fast Castle SPA (matrix 39).

7.8.4. None of the IP's comments on the RIES (including those of NE [\[REP6-095\]](#) and [\[REP7-039\]](#)) raised any concerns with the ExA's understanding as set out in table 4.1 of the RIES.

7.8.5. In particular, the SoCG's with NE [\[REP6-015\]](#) and [\[REP6-016\]](#) state agreement with the Applicants conclusions of no LSE in respect of all of the above sites (with the exception of St Abbs Head to Fast Castle SPA, given that it is in Scotland with Scottish Natural Heritage (SNH) as the relevant SNCB). This point was discussed at ISH8 with the Applicant stating that they had not received a response from SNH as of 3 April 2019 [\[REP5-030\]](#). This was also reflected in the SoCG with NE [\[REP6-015\]](#).

7.8.6. At this point, there is an absence of any response from SNH disputing the Applicant's no AEOI conclusions for the St Abb's Head to Fast Castle SPA, and no other IPs raised any concerns in respect of this site during the Examination. NE are satisfied with the Applicant's evidence there is no AEOI for European sites that are more proximal to the Proposed Development site which share similar qualifying features (for example the Farne Islands SPA and Northumberland Marine SPA). On this basis, the ExA is satisfied with the Applicant's conclusion of no AEOI at the St Abbs Head to Fast Castle SPA.

7.8.7. Therefore, the ExA is content that the information provided by the Applicant (as signposted by the above references to the Applicant's integrity matrices [\[REP2-004\]](#)) sufficiently demonstrates no AEOI can be concluded in relation to all qualifying features screened in to the assessment by the Applicant for the European sites listed above.

7.8.8. The following sections of this Chapter deal with (on a site-by-site basis) the findings of the examination relating to disputes between the Applicant and IP's on the potential for AEOI to the following sites:

- Thanet Coast and Sandwich Bay SPA with Thanet Coast and Sandwich Bay Ramsar site;
- Outer Thames Estuary SPA;
- Flamborough and Filey Coast SPA;
- Thanet Coast SAC; and
- Southern North Sea SAC.



## THANET COAST & SANDWICH BAY SPA WITH THANET COAST & SANDWICH BAY RAMSAR SITE

- 7.8.9. The Applicant's consideration of potential for AEoI on these sites is summarised in matrices 2 and 3 of the ExA's RIES [PD-018]. The Applicant's comments on the RIES [REP6-037] were not substantive in relation to the ExA's signposting of the evidence within the RIAA [REP2-018] [REP2-019], which concluded that there would be no AEoI alone or in-combination with other plans and projects.
- 7.8.10. Initial concerns with regard to the Applicant's conclusions of no AEoI related to the potential impacts associated Landfall Option 2 were raised by a number of IPs, as set out in paragraphs 7.4.4 - 7.4.6 of this Report.
- 7.8.11. NE were also of the view that the saltmarsh was a supporting habitat of the SPA and Ramsar site, whereas the Applicant did not agree (paragraph 9.3.2 of [REP6-095]). Therefore, the loss of habitat associated with Landfall Option 2 was of concern to IPs in terms of AEoI conclusions for the features of both the SPA and Ramsar site.
- 7.8.12. With the removal of Landfall Option 2, the Applicant acknowledges that temporary habitat loss/ disturbance of saltmarsh and other intertidal habitats would still occur during construction and decommissioning of the Proposed Development. Taking account of proposed mitigation measures (including a Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP)), the Applicant considered that this would not result in an AEoI of the Thanet Coast SPA and Ramsar site (paragraphs 11.2.19-11.2.32, [REP2-018] [REP2-019]).
- 7.8.13. Paragraphs 4.2.7 and 4.2.8 of the RIES [PD-018] explain that there were various iterations of the SMRMP during the examination process [APP-147], [REP1-073], [REP2-032] and [REP4-020] and that NE's agreement of no LSE alone and in-combination was subject to the SMRMP having been updated to reflect their comments on previous iterations of the drafts during the Examination.
- 7.8.14. The SMRMP (revision C) [REP4-020] is secured by DCO requirement 13 and is a certified document in schedule 13 [REP8-013]. It is also secured via conditions 15(c) (Pre-construction monitoring surveys) and 17(c) (Post construction) of the Export Cable System DML (DCO schedule 12) [REP8-013]. The SMRMP includes provisions for consultation with relevant stakeholders, including NE, MMO, EA and TDC through pre and post-construction surveys, monitoring and reinstatement.
- 7.8.15. In their SoCG at Deadline 6 [REP6-019], NE record their specific agreement with the Applicant's assessment in table 5 and the conclusion that there is no AEoI alone and in-combination with other plans and projects, citing specifically the golden plover and ruddy turnstone qualifying features: *'The SMRMP has been agreed with the applicant. This plan which is secured within the DCO should provide the relevant mechanisms to monitor, mitigate and if necessary reinstate areas of saltmarsh damaged by the applicant during construction'*.

- 7.8.16. There is also specific agreement in [\[REP6-019\]](#) that the Applicant has considered all relevant plans and projects for the determination of in-combination effects on the saltmarsh.
- 7.8.17. In their comments on the RIES [\[REP6-095\]](#), NE also state that it is *'in agreement that the proposed development will not result in an AEOI for this particular designated site; this is provided that saltmarsh impacts are ultimately temporary in nature. The applicant has taken on board all our comments regarding the Saltmarsh Mitigation Reinstatement and Monitoring Plan (SMRMP) in order to achieve saltmarsh recovery. This takes into account known best practice regarding working on saltmarsh, has the commitment of regular updates from an ecological clerk of works to quickly respond to any concerns and addresses potential risks regarding topography'*.
- 7.8.18. In terms of other IP submissions relating to these European sites, the RSPB agreed that, in its view, *'the project will have no significant impact'* on the Thanet Coast and Sandwich Bay SPA and Ramsar site [\[RR-057\]](#).
- 7.8.19. [\[REP3-076\]](#) provides evidence that the EA were satisfied that any concerns they had around the SMRMP were covered by the representations and comments made by NE at deadline 3.
- 7.8.20. As noted in paragraph 4.2.11 of the RIES, KWT has maintained its objection to the proposed cable landfall being located at Pegwell Bay and has instead favoured alternative landfall locations [\[RR-048\]](#); [\[REP1-102\]](#) and [\[REP3-081\]](#). KWT considered *'...it is not possible to state that the Proposed Development will not damage the integrity of the [Thanet Coast and Sandwich Bay SPA and Ramsar] site'* [\[REP3-081\]](#).
- 7.8.21. Objections are retained through to their SoCG at Deadline 6 [\[REP6-085\]](#), although not specifically stating disagreement with the Applicant's no AEOI conclusions at the Thanet Coast and Sandwich Bay SPA and Ramsar sites.

### **ExA's conclusions**

- 7.8.22. The ExA has had regard to the concerns and standing objections of KWT [\[REP3-081\]](#) [\[REP6-085\]](#) but is content that sufficient evidence has been provided by the Applicant to demonstrate that there is no AEOI in respect of these matters. The ExA considers that the development and application of the SMRMP (and its associated provisions) is sufficient to avoid or reduce impacts such that no AEOI on any of the qualifying features of the Thanet Coast and Sandwich Bay SPA and Thanet Coast and Sandwich Bay Ramsar site would occur. The consideration in this regard is taken having regard to the impacts of the Proposed Development alone and in-combination with other plans and projects. The evidence supporting these conclusions is set out in matrices 2 and 3 of the RIES [\[PD-018\]](#).
- 7.8.23. The ExA understands the view expressed by NE and others that the HDD landfall installation method (Landfall Option 3) is a preferential option (compared with open trenched techniques used in Landfall Option 1)

because it has a lesser temporary impact upon the saltmarsh (and greater certainty with regards to reinstatement). However, the ExA is content that provisions within the SMRMP and the certainty of its application secured through the DCO (and Export Cable System DML) are sufficient to conclude that AEOI (alone and in-combination) can be excluded for these sites with either Landfall Option 1 or Landfall Option 3 being pursued.

## **OUTER THAMES ESTUARY SPA**

- 7.8.24. The Applicant concluded that there would be no AEOI alone or in-combination with other plans and projects on any of the qualifying features of the SPA [[REP2-018](#)] [[REP2-019](#)]. The ExA notes that a number of submissions were made by the Applicant during the Examination in support of the RIAA material relating to the Outer Thames Estuary SPA (paragraph 5, section 1.3 and table 2 of [[REP6A-004](#)]). These are not listed in detail here but are referenced in this section as appropriate.
- 7.8.25. The Examination focussed on methodological disputes regarding disturbance and displacement of the red-throated diver during operation and maintenance of the Proposed Development, and by extension, the magnitude of disturbance and displacement effects on the same feature in-combination with other plans and projects.
- 7.8.26. As recorded in matrix 4 of the RIES [[PD-018](#)], the Applicant also screened in collision risk and barrier effects on little tern and common tern (alone and in-combination with other plans and projects). It is noted here that collision risk and barrier effects on red-throated diver have been screened out by the Applicant as having no LSE (as set out in matrix 17 of [[REP2-004](#)]). No IPs have raised any concerns in respect of the Applicant's conclusions, including comments made by IPs on the RIES. NE's comments on the RIES [[REP6-095](#)] state that they '*...are in agreement with the ExA's narrative associated with this particular designated site.*'
- 7.8.27. Having regard to the information presented in the Applicant's RIAA, the ExA is satisfied that there would be no AEOI from the project alone or in-combination with other plans and projects on the common tern or little tern features of the Outer Thames Estuary SPA.
- 7.8.28. The following sections therefore focus on the potential for AEOI on red-throated diver in terms of disturbance and displacement (for the Proposed Development alone and in-combination with other plans and projects).

### **Proposed Development alone**

- 7.8.29. The Applicant's approach to the assessment of displacement effects on red-throated divers is set out in paragraphs 11.4.7 – 11.4.14 [[REP2-018](#)]

[[REP2-019](#)]<sup>182</sup>, outlining that certain assumptions had been made based on construction monitoring surveys for Thanet Offshore Wind Farm, which found that there was no displacement of red-throated divers beyond the site boundary. Tables 11.5 and 11.6 of [[REP2-018](#)] [[REP2-019](#)] contained the Applicant's red-throated diver 'displacement matrices' for the winter and spring bio-seasons respectively.

- 7.8.30. The approach and results presented in the Applicant's displacement matrices were questioned by the ExA in ExQ 1.1.11 [[PD-012](#)] in response to matters raised in the RRs of NE and the RSPB around the applied displacement methodology [[RR-053](#)] and [[RR-057](#)]. In particular, NE and the RSPB contended that the number of red-throated divers the Applicant predicts would be displaced by the Proposed Development may be an underestimate, due to the Applicant's methodology not having followed agreed a Joint SNCB Interim Displacement Advice Note<sup>183</sup> (paragraph 5.3.1.1 of [[RR-053](#)] and section 6.4.3 of [[REP1-113](#)]).
- 7.8.31. NE cited evidence demonstrating that red-throated diver displacement occurs at distances beyond 4km from offshore wind farm developments. They suggested that this would support a methodological approach that takes into account displacement beyond 4km (Q1.1.11, [[REP1-116](#)]). NE considered that there was no clear justification to change its current advice of assuming 100% displacement out to 4km and advised that this scenario is presented alongside the Applicant's preferred scenario [section 6.4.4, [REP1-113](#)].
- 7.8.32. The RSPB submission at Deadline 1 [[REP1-150](#)] confirmed that their RR [[RR-057](#)] would be their only submission to the Examination. Therefore, no further comments were received from the RSPB in respect of the Outer Thames Estuary SPA.
- 7.8.33. The Applicant addressed the difference in opinion on this issue and provided additional displacement matrices for red-throated diver (Annex C of Deadline 1 Submission (Appendix 1, Annex D to Deadline 1 Submission [[REP1-023](#)])). The Applicant also considered that the displacement buffers adopted in the application documentation are based on empirical regional and site-specific data, which it considered to be appropriate [[REP2-013](#)]. Finally, the Applicant stated that due to the low numbers of birds potentially displaced by the Proposed Development, a change in the displacement buffer would not materially change the outcome of the assessment [[REP2-013](#)].

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<sup>182</sup> These references are to the updated RIAA submitted at Deadline 2 of the Examination, although the version of the RIAA submitted with the DCO application [[APP-031](#)], which formed the basis of IP comments up to and including Deadline 2, contains the same information in respect of the sections mentioned.

<sup>183</sup> Joint SNCB Interim Displacement Advice Note: Advice on how to present assessment information on the extent and potential consequences of seabird displacement from Offshore Wind Farm (OWF) developments. ([http://jncc.defra.gov.uk/pdf/Joint\\_SNCB\\_Interim\\_Displacement\\_AdviceNote\\_20\\_17.pdf](http://jncc.defra.gov.uk/pdf/Joint_SNCB_Interim_Displacement_AdviceNote_20_17.pdf))

- 7.8.34. In response to this at Deadline 2, NE stated that *'whether or not the applicant's or our recommended methodology is used the overall conclusions are unchanged'* (page 33, Q1.1.11 of [REP2-045]). It was also subsequently agreed with NE in the Examination through the SoCG process *'that Thanet Extension will not have an adverse effect on the integrity on the red-throated diver population of the Outer Thames Estuary SPA when considered alone'* [REP6-015].
- 7.8.35. At Deadline 4, the Applicant considered the consequences of the SEZ (as described in section 7.4 of this Recommendation Report) for the assessment of impacts to the red-throated diver feature of the Outer Thames Estuary SPA [REP4-023]. Whilst the SEZ was developed as mitigation for shipping/ navigation, the Applicant considered that it also provides mitigation for features of the Outer Thames Estuary SPA due to the SEZ increasing the separation distance between the boundary of the Outer Thames Estuary SPA and the closest possible wind turbine (from 6.15km to 7.65km) [REP4B-015]. The Applicant considers this provides greater weight to their conclusions of no AEoI, as the SEZ places the Proposed Development array boundary *'at the extreme limit of the (very precautionary) Natural England 8km screening distance'* and that this 8km range is in their view *'overly precautionary for Thanet Extension, with site specific data indicating displacement falling to zero within 4km and displacement less than 100% even within the existing wind farm area'* [REP5-016].
- 7.8.36. NE also stated that in respect of introduction of the SEZ, *'we 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].
- 7.8.37. Although this was reiterated in the response of NE at Deadline 5 [section 7, REP5-064], the final Offshore Ornithology SoCG between the Applicant and NE [REP6-015] states that *'Natural England agree that there is unlikely to be an adverse effect on integrity on red throated diver population within Outer Thames Estuary SPA alone, based on the fact that the project and 4km buffer is outside of the Outer Thames Estuary SPA boundary'*.
- 7.8.38. In the Applicant's comments on the RIES [REP6-037], they cited an additional submission at Deadline 6 [REP6-065] emphasising *'the importance of site specific data, collected at Thanet OWF, that provides for a site specific evidence base for displacement risk at Thanet Extension'*. Accounting for the SEZ area reduction and distance increase between the Proposed Development and the Outer Thames Estuary SPA, the Applicant estimates that between 0.18 and 0.93 birds per annum (depending on the Applicants vs SNCB applied methodologies) would be subject to mortality as a consequence of displacement from the Proposed Development per annum (that are attributable to the Outer Thames Estuary SPA) [REP6-037].

7.8.39. At Deadlines 7 and 8, no submissions were made by NE on this matter further to the SoCG with the Applicant at Deadline 6 [REP6-015]. The ExA notes that NE provided responses to the Applicants comments on the RIES [REP7-039], but that none were substantively related to the effect of the Proposed Development on the Outer Thames Estuary SPA.

### **In-combination**

7.8.40. As recorded in footnotes d and e of matrix 5 of the RIES [PD-018], NE and RSPB's comments around the methodology for assessing the impacts on red-throated diver (as summarised in the previous paragraphs) extend to the assessment of in-combination effects.

7.8.41. The RIES summarised the Applicant's position that in-combination effects during construction of the export cable corridor and wind farm array would not result in AEoI as such effects would make no difference to the long-term maintenance of the red-throated diver population. This conclusion has not been disputed by any IPs in their comments on the RIES.

7.8.42. Operational disturbance and consequent displacement by the Proposed Development in-combination was considered in the RIAA (paragraphs 12.4.11 – 12.4.45 of [REP2-018] [REP2-019]). In particular, table 12.8 of the RIAA lists those projects considered in the in-combination assessment whose potential displacement effects were attributed to the Outer Thames Estuary SPA.

7.8.43. The Applicant concluded no AEoI for red-throated diver during operation and maintenance based on a prediction of displacement resultant mortality to a small number of individuals that makes no material difference to the long-term maintenance of the red-throated diver population of the Outer Thames Estuary SPA. In the RIAA Addendum, [REP4B-015], the Applicant concludes there are no material changes to the conclusions of the RIAA (on the same basis as the discussion in the previous paragraphs regarding the project alone).

7.8.44. Tables 12.9 and 12.14 of the RIAA [REP2-018] [REP2-019] demonstrate the Applicants position that the *'great majority of the contribution [of the Proposed Development] to the in-combination percentage change arises from OWFs that have been consented and are already operational (Tier 1)'*.

7.8.45. NE provided comments on the Applicant's red-throated diver in-combination assessment methodology document as part of their WR (paragraphs 6.4.3 – 6.4.10 of [REP1-113]): *'To summarise, although Natural England disagrees with some aspects of the methodology used to assess red throated diver displacement, we acknowledge that if the recommended methodology were used, it is likely that the overall conclusions would remain the same. This is that there is no AEoI or significant effect from the project alone, and the contribution made to the in-combination and cumulative totals is small enough not to make a material difference'*. This was reiterated by NE at Deadline 2 (page 33, Q1.1.11 of [REP2-045]).

- 7.8.46. The methodological issues around red-throated diver displacement as discussed and considered in the Examination are described in the previous paragraphs of this Chapter, and they had an equal bearing on the Applicant's conclusions of no AEoI in-combination.
- 7.8.47. NE acknowledged there is some uncertainty whether there is likely to be any contribution from the Proposed Development to in-combination displacement effects, now that the SEZ forms part of the application [REP5-064]. However, NE reiterated that due to the existing displacement effects from operational offshore wind farm projects, *'...it is not possible for Natural England to state that there is no adverse effect in-combination beyond reasonable scientific doubt'* [REP5-064]. In this context, NE highlighted the importance of post consent ornithological monitoring, should the Proposed Development be consented, to focus on the extent of red-throated diver displacement in and around Outer Thames Estuary SPA [REP5-064].
- 7.8.48. The ExA notes that an offshore ornithological monitoring plan (in accordance with the in-principle offshore ornithological monitoring plan [REP3-057] forms part of condition 13 (Pre-construction plans and documentation) of the Generation Assets DML (DCO schedule 13) [REP8-013].
- 7.8.49. In response to the RIES, the Applicant emphasised that 'that all OWFs consented to date (where the OTE SPA and RTD has been a feature of interest) have been granted consent on the basis of no AEoI, including the most recent example (East Anglia Three) in 2017' [REP6-037]. This point is expanded by the Applicant in [REP6-065], along with the following:
- The Applicant considers evidence from post construction monitoring of the existing Thanet offshore wind farm demonstrates that the distance at which the percentage displacement of red-throated diver falls to zero at this particular site is less than 4km (and that they were recorded within the array itself; evidence that displacement is not 100% within the existing Thanet offshore wind farm); and
  - The Applicant *'Strongly disagrees'* with NE's view that the Proposed Development has the potential to result in additional displacement effects within the SPA, as when accounting for the SEZ, separation distance is now be considered to be too great for any direct displacement to occur. Evidence of displacement out to 8km is very precautionary and derives from a study of offshore wind farm that is greater in size and is within the SPA itself (ie an area of much higher diver densities).
- 7.8.50. NE did not provide any specific response to these points and their comments on the Applicant's response to the RIES [REP7-039] do not raise any further comments beyond the position set out above
- 7.8.51. Section 5 of the SoCG between the Applicant and NE [REP6-015] records *'In-combination effect on the integrity of Outer Thames Estuary SPA with regards red throated diver'* as a matter of disagreement between the

parties. However, the SoCG also states NE's position that, in relation to the assessment of in-combination displacement effects:

*'The methods for undertaking the in-combination/cumulative assessment for red throated diver are broadly agreed. However, the revised red-throated diver cumulative (EIA) and in-combination (HRA) impact assessment methodology clarification note (December 2018) appears to under-estimate the extent of the cumulative effects. This is because the number of divers potentially displaced is derived using Seabird Mapping and Sensitivity Tool (SeaMaST) but then the expressed as a percentage of the SW North Sea winter Biologically Defined Minimum Population Scale (BDMPS), and not the percentage of the total derived using SeaMaST. The population of the winter BDMPS is 10,177 and within the same area the SeaMaST data set provides an estimate of 7,639. Therefore the cumulative effects are underestimated by around a quarter. However, we acknowledge that the methodology does not change the relative contribution that Thanet Extension which is small compared to consented offshore windfarms.'*

7.8.52. The final position between the parties in [REP6-015] is then set out as follows:

*'The Applicant and NE agree that the issue that NE has identified affects the consideration of the percentage contribution made by other consented offshore wind farms, but with respect to proposal applied for the Applicant and NE agree that the methodology does not change the relative contribution that Thanet Extension makes which is small compared to consented offshore wind farms.'*

### **ExA conclusions**

7.8.53. The ExA is satisfied that the Applicant's conclusions of no AEOI from disturbance and displacement of red-throated diver for the Proposed Development alone are well supported and that sufficient evidence has been provided to demonstrate that *'subject to natural change, red-throated diver will be maintained as a feature in the long-term with respect to the potential for adverse effects from disturbance and displacement'* (paragraph 11.4.49 of [REP2-018] [REP2-019]).

7.8.54. The ExA has taken into account the methodological disputes between the Applicant and NE and the RSPB. The ExA is satisfied that the Applicant has provided sufficient supplementary material (as summarised in (paragraph 5, section 1.3 and Table 2 of [REP6A-004]) to demonstrate to the satisfaction of NE that *'whether or not the applicant's or our [NE's] recommended methodology is used the overall conclusions are unchanged'* (page 33, Q1.1.11 of [REP2-045]). This agreement is recorded the SoCG between NE and the Applicant [REP6-015].

7.8.55. In terms of in-combination effects, the ExA is satisfied with the Applicant's consideration of relevant plans and projects for inclusion following a tiered approach to the assessment (as set out in tables 8.3, 8.6 and 12.8 of the RIAA [REP2-018] [REP2-019]).



7.8.56. Disagreements over the displacement methodologies applied were not the primary reason why NE did not agree to the Applicant's no AEOI conclusions, but they remained a factor through the Examination. However, by the conclusion of the Examination, NE agreed [REP6-015] that the differing methodologies makes little material difference in terms of the Proposed Development's contribution to in-combination effects. The final position of NE was that whilst they agree the Proposed Development makes a "small" contribution compared to consented offshore wind farms, an overall AEOI from this combined contribution cannot in its view be ruled out beyond reasonable scientific doubt.

7.8.57. The ExA has also had regard to NE's position in respect of the SeaMaST and BDMPS calculations undertaken by the Applicant (and the potential underestimation of the in-combination effects). It is relevant that these issues were only brought to the attention of the ExA at Deadline 6 [REP6-015] of the Examination. As such this particular issue was not specifically captured as part of the ExA's RIES.

7.8.58. The ExA has had regard to the evidence presented in the Examination and concludes that AEOI on the red-throated diver feature of the Outer Thames Estuary SPA in-combination with other plans and projects can be excluded. The ExA's conclusion in this regard is influenced by the finding that:

- the quantum of effect from the Proposed Development is unlikely to make a material contribution to the combined displacement effects;
- a "precautionary" approach has been applied to the assessment of displacement effects out to 8km from the Proposed Development (as suggested by site-specific evidence from post construction monitoring of the existing Thanet offshore wind farm); and
- the "great majority" of the contribution arises from other projects that have been consented and are already operational (tier 1).

It follows that the ExA is content that effect arising from the Proposed Development, whilst theoretically present, is so minimal as to be within the error margin of relevant assessment and not to be a material consideration.

## **FLAMBOROUGH AND FILEY COAST SPA**

7.8.59. The Applicant concluded that there would be no AEOI alone or in-combination with other plans and projects on any of the qualifying features of the SPA [REP2-018] [REP2-019]. The ExA notes at this point that a number of submissions were made by the Applicant during the Examination in support of the RIAA material relating to Flamborough and Filey Coast SPA (paragraph 5, section 1.2 and Table 1 of [REP6A-004]). These are not listed in detail here but are referenced in this section as appropriate.

7.8.60. The Examination focused on methodological disputes around operational collision risks (alone and in-combination) to the gannet and kittiwake qualifying features, as well as the magnitude of collision risk effects.

These matters are considered in the following paragraphs and apply to operation of the Proposed Development, and not to construction.

- 7.8.61. As recorded in matrix 5 of the RIES [PD-018], the Applicant also screened in disturbance and displacement effects (alone and in-combination) on the guillemot and razorbill qualifying features (which were screened out as having no LSE for collision risk).
- 7.8.62. The Applicant considered the potential for AEOI on these features at paragraphs 11.4.15 – 11.4.37 (construction) and 11.4.73 – 11.4.92 (operation and maintenance) of [REP2-018] [REP2-019]. In-combination effects for guillemot and razorbill have not been considered in Matrix 36, page 114 of [REP2-004]. They were also not considered in section 12.4 of [REP2-018] [REP2-019].
- 7.8.63. In response to the RIES, neither the Applicant [REP6-037] nor NE [REP6-095] made any comments on the ExA's summation in this regard, which was that the Applicant's conclusions of no AEOI (alone and in-combination) of guillemot and razorbill at the Flamborough and Filey Coast SPA have not been disputed by IPs during the Examination. This is on the basis that predictions of displacement resultant mortality to a small number of guillemot and razorbill making *'no material difference to the long-term maintenance of the guillemot and razorbill populations of the Flamborough and Filey Coast SPA'*.
- 7.8.64. The SoCG between the Applicant and NE does not record any dispute with regard to guillemot and razorbill at the SPA [REP6-015], nor have any other IPs raised concerns with the Applicant's conclusions on these features.
- 7.8.65. As such, the ExA is satisfied, based on the information presented in the Applicant's RIAA [REP2-018] [REP2-019] that there would be no AEOI from the Proposed Development alone or in-combination with other plans and projects on the guillemot and razorbill features of the Flamborough and Filey Coast SPA.
- 7.8.66. For the reasons given in matrix 36 of [REP2-004], the ExA agrees that barrier effects during operation for gannet, kittiwake and the breeding bird assemblage would not result in AEOI (alone or in-combination) due to *'the minimal effect of deviating around the site on migration that makes no material difference to the long-term maintenance of the gannet and kittiwake populations of the Flamborough & Filey Coast SPA'*. As highlighted in table 3.1 of the RIES [PD-018] and acknowledged by the Applicant [REP6-037], this issue only assessed and reported matrix 36 of [REP2-004] as opposed to being within the main body of the RIAA.
- 7.8.67. The ExA notes that the breeding seabird assemblage feature of the SPA includes all of the individually cited qualifying features plus northern fulmar. As recorded in table 3.1 of the RIES [PD-018] and section 9.14 of the RIAA [REP2-018] [REP2-019], the northern fulmar component species of the breeding bird assemblage was screened out by the Applicant as

having no LSE, and the ExA has not seen any evidence to question this conclusion.

- 7.8.68. The following sections therefore focus on the potential for AEoI on collision risk (alone and in-combination) for the gannet and kittiwake qualifying features (as well as the same features and effects as a component of the breeding bird assemblage qualifying feature).
- 7.8.69. No IPs disputed the Applicant's conclusion that the introduction of the SEZ would have no bearing on the assessment of impacts to this European site as reported in the RIAA [[REP2-018](#)] [[REP2-019](#)], the reasons for which were set out in the RIAA Addendum [[REP4B-015](#)].

### **Proposed Development alone**

- 7.8.70. The Applicant's approach to collision risk modelling (CRM) is presented in [[APP-080](#)], including the methods, data input and results.
- 7.8.71. The Applicant explained that due to uncertainties in data collected and reported by the Offshore Renewables Joint Industry Programme (ORJIP), it considered the ORJIP data unsuitable for use in its CRM [[APP-045](#)]. As a result, CRM was undertaken based on the Band (2012) 'option 2' model using generic bird flight height data [[APP-045](#)], including kittiwake and gannet.
- 7.8.72. Collision risk to gannet and kittiwake from the Proposed Development alone (during operation) was considered in the RIAA (paragraphs 11.4.142 – 11.4.145 and 11.4.146 – 11.4.149 of [[REP2-018](#)] [[REP2-019](#)] respectively), and the Applicant concluded no AEoI in the case of both species on the basis that a '*very small number*' of collision risk mortalities would make '*no material difference to the long-term maintenance*' of either the gannet or kittiwake populations.
- 7.8.73. NE's RR [[RR-053](#)] stated that it had outstanding concerns regarding impacts to the kittiwake qualifying feature of the Flamborough and Filey Coast SPA. These concerns were that by using option 2 of the Band (2012) model (rather than option 1, which uses site specific flight height data and nocturnal activity factors), the predicted mortalities may be underestimated [[REP1-113](#)] [[REP1-116](#)]. NE considered [[REP1-113](#)] that collision risk modelling predictions using Band model option 1 should be presented alongside Band model option 2 outputs, and the figures used in the cumulative/ in-combination collision risk assessments.
- 7.8.74. These concerns were shared by the RSPB [[RR-053](#)], although no further substantive submissions beyond their RR were received during the Examination.
- 7.8.75. Notwithstanding these concerns, NE had agreed that use of its recommended input parameters for CRM (even at the upper range of mortality) would not change the overall assessment conclusions [[REP4-033](#)] and would make '*no material difference*' to those conclusions (Table 4, [[REP6-015](#)]).

7.8.76. The ExA is satisfied that the Applicant has presented sufficient evidence that the Proposed Development alone would not have an AEOI on either gannet or kittiwake from collision mortality. These conclusions are agreed by NE as reflected in their final SoCG with the Applicant [[REP6-015](#)].

7.8.77. In this context, [[REP3-058](#)] and [[REP4-029](#)] presents the Applicant's updated CRM 'based on highly precautionary values provided by NE'. In respect to kittiwake, this represents mortality associated with the Proposed Development as between 0.60 and 1.63 birds per annum for the site, which is agreed with NE as resulting in no AEOI, and the ExA agrees with this conclusion.

7.8.78. Similar updated calculations were not undertaken for gannet (this is considered further in the in-combination sections in the following paragraphs). However, based on table 12.15 of the RIAA [[REP2-018](#)] [[REP2-019](#)], the ExA notes that the magnitude of collision predictions attributed to the site is the same for gannet and kittiwake. No AEOI for gannet (project alone) is also agreed with NE in their SoCG [[REP6-015](#)] and the ExA is satisfied for these reasons.

### **In-combination**

7.8.79. Notwithstanding the comments from IPs on the methodological approaches to CRM (which also applied to the assessment of the Proposed Development alone), the focus of the Examination and submission from IPs in relation to the Flamborough and Filey Coast SPA related to disagreements with the Applicant's conclusions of no AEOI in-combination with other plans and projects.

7.8.80. As outlined in the previous paragraphs, the Applicant updated their CRM calculations and resulted in NE agreeing that use of its recommended input parameters for CRM (even at the upper range of mortality) would not change the overall assessment conclusions [[REP4-033](#)] and would make 'no material difference' to those conclusions (Table 4 [[REP6-015](#)]).

7.8.81. However, in respect of gannet and kittiwake, the final SoCG between the Applicant and NE [[REP6-015](#)] sets out NE's view that they cannot agree to no AEOI in-combination. For ease of reference, these two species are considered separately in the following paragraphs.

### **Kittiwake**

7.8.82. Collision risk to kittiwake in-combination was considered in the RIAA (table 12.15 and paragraphs 12.4.29, 12.4.32 and 12.4.233, [[REP2-018](#)] [[REP2-019](#)]). It concluded no AEOI of the site based on a prediction of collisions to be a 'very small number of individuals that makes no material contribution to an in-combination collision risk assessment of the gannet and kittiwake populations of the SPA'.

7.8.83. NE and the RSPB expressed concerns about the Applicant's collision risk methodologies in their RRs; these concerns related to both the effects of

the Proposed Development alone and in-combination [[RR-053](#)] [[RR-057](#)], as set out above.

- 7.8.84. The key points and submissions during the examination up to Deadline 5 are set out in footnote f of matrix 6 of the RIES [[PD-018](#)]. These are summarised but not repeated in full here.
- 7.8.85. In [[REP3-058](#)] the Applicant responded to the possibility raised by NE of using the latest Marine Scotland "Science R-programme" to provide a revised set of outputs for assessment, but that they were of the view that *'at present this collision risk model is a beta version and it comes without assurance that no issues with its operation and outputs might be found...'*. Instead, the Applicant agreed to provide a further set of collision risk modelling outputs that accounted for variance around parameters in relation to nocturnal activity rates and avoidance rates (provided at [[REP1-023](#)])
- 7.8.86. In [[REP4-029](#)], the Applicant provided further justification to support its conclusion that the Proposed Development would not result in an AEoI in-combination. The Applicant also argued that the Blyth (NaREC Demonstration) and Beatrice Demonstrator offshore wind farms would shortly be decommissioned, thereby further reducing kittiwake collision mortality in-combination totals (and offsetting the contribution from the Proposed Development).
- 7.8.87. In [[REP4-033](#)], NE welcomed the updated collision risk estimates provided by the Applicant [[REP3-058](#)] and acknowledged that use of the upper range of mortality would not change the overall assessment conclusions.
- 7.8.88. NE acknowledged that the contribution to kittiwake collision mortality from the Proposed Development *'...is likely to be small in the context of an in-combination total arising from a number of operational, consented or proposed projects, several of which are larger and/or closer to the SPA, including projects within the likely foraging range during the breeding season'* [[REP4C-008](#)]. NE's position on this matter remained unchanged in their final SoCG with the Applicant [[REP6-015](#)].
- 7.8.89. The Applicant re-iterates [[REP5-016](#)] its conclusion of no AEoI alone and in-combination primarily is based on *'A lack of an appreciable contribution to the in-combination collision risk totals for FFC SPA from Thanet Extension, being 0.6-1.63 per year (depending on the level of precaution applied)'* and further that *'the imminent decommissioning of Blyth and Beatrice Demonstrator contribute approximately 0.65 (i.e. a similar contribution to that predicted for Thanet Extension)'*. The Applicant also argued that there was inherent precaution in the modelling, being based on *'as assessed'* project parameters and not the *'frequently much reduced numbers "as built"'* (with reference to a Crown

Estate 'headroom report'<sup>184</sup> suggesting that current collision risk estimates for kittiwake are an overestimate).

7.8.90. The Applicant also refers [REP5-016] to a document submitted in relation to the Examination of the Norfolk Vanguard DCO application<sup>185</sup>, which implies that even accounting for the most precautionary in-combination totals for kittiwake collision risk at the Flamborough and Filey Coast SPA (including the contribution of the Proposed Development), the evidence shows a slowing of the rate of population increase as opposed to a population decline. This point was developed further by the Applicant as part of [REP6-065], where they noted the following points (section 3).

- No AEoI in-combination was concluded by the SoS in respect of the (then Flamborough Head and Filey Coast pSPA and Flamborough Head and Bempton Cliffs SPA) for both the Hornsea 2 and East Anglia 3 projects, and in the case of the latter, NE advised that *'the EA3 contribution while not de minimis is so small as to not materially alter the significance or the likelihood of an adverse effect on the integrity of the SPA'*.
- A recent non-material change granted by the SoS for Dogger Bank Creyke Beck *'provides additional headroom for other projects of up to 68.8 kittiwakes'* from the Flamborough Head and Filey Coast SPA through downward revisions to their CRM, and the Applicant understands that both NE and RSPB accepted as part of that process that there would be no adverse effect from the project alone under all scenarios and at all avoidance rates and also in-combination with other plans and projects under all scenarios.
- Given the Dogger Bank Creyke Beck non-material change and coupled with *'recent agreed changes'* to Triton Knoll, the precaution built in through the assessment of the Thanet Extension Proposed Development (with very small numbers attributed in the context of the existing headroom and in light of recent agreed changes) should be taken into account in AEoI conclusions.
- The various post submission ornithological notes supporting the Norfolk Vanguard project (as cited in paragraph 4.2.102 of the RIES [PD-018]) including *'the most up-to-date collision risk estimates alongside an updated Population Viability Analysis (PVA)'* do not factor in the reduction of c.68 kittiwake associated with the Creyke Beck non-material change).
- In response to NE's comments at [REP5-066], the Blyth (NaREC Demonstrator) was consented for a maximum of 15 turbines, with a total capacity of 99.9MW and has 58.4MW remaining and that project has not therefore installed the full number of wind turbine generators consented.

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<sup>184</sup> MacArthur Green (2017). Estimates of Ornithological Headroom in Offshore Wind Farm Collision Mortality. The Crown Estate, London.

<sup>185</sup> "Norfolk Vanguard Offshore Wind Farm Offshore Ornithology Assessment Update for Deadline 6" (10.D6.17)

<https://infrastructure.planninginspectorate.gov.uk/document/EN010079-002764>

- The Applicant recognises NE's position that there may be some uncertainty around the current estimates of the in-combination totals but notes that NE recently agreed that '*significant decreases in kittiwake mortality*' were attributable to the non-material change to Dogger Bank Creyke Beck. The Applicant also notes that NE's response to the non-material change application<sup>186</sup> states '*any future projects entering the consenting process should take into account the revised Dogger Bank Creyke Beck project envelope in their in-combination assessment, should this non-material change to the DCO be accepted*'<sup>187</sup>.
- Whilst the Applicant notes that the methods used to determine the headroom within The Crown Estate Headroom report may not be agreed with NE, the headroom associated with the Dogger Bank Creyke Beck non-material change makes a greater contribution to kittiwake mortality at the Flamborough and Filey Coast SPA.

7.8.91. In [REP5-066], NE remained of the view that the worst case scenario 'as assessed' for the in-combination projects should continue to be applied until such time as the any remaining capacity (headroom) between the consent and the 'as built' project is 'withdrawn' (ie formalisation of 'as built' collision risk calculations are undertaken for the projects in question). NE also disagreed that there is new evidence to suggest assessments are over precautionary given the '*considerable uncertainty around the current estimates of the in-combination totals*' and '*lack of agreed figures and a common method to arrive at them inevitably [leading] to confusion*' [REP5-066].

7.8.92. At Deadline 7 [REP7-037] NE responded to these points. It was NE's view that the Applicant had mis-interpreted the nature of the Dogger Bank Creyke Beck non-material change, which '*relates to a revision of the Rochdale Envelope for that project to allow the installation of larger turbines.....but importantly does not affect the worst case scenario: the consented Rochdale Envelope and therefore the potential final project design continues to include the other turbine sizes...Therefore the 'headroom' referred to...is based on the incorrect assumption that Dogger Bank Creyke Beck have now refined their consent to only include the larger turbines*'.

7.8.93. NE also clarified [REP7-037] that in respect of Hornsea 2, the conclusion that the project did not make a meaningful contribution to the existing in-combination AEoI was based on '*significant mitigation through removal of the smallest turbine option and raising hub heights*', and the ExA understands this was secured through provisions in the DCO.

7.8.94. In this regard, and as recorded in the RIES [PD-018], NE also disagree with the Applicant's suggestion that there is new evidence to demonstrate that assessments are over precautionary given the

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<sup>186</sup> [NE response to the Dogger Bank Crekye Beck non-material change request](#) (18 September 2018).

<sup>187</sup> The [Dogger Bank Creyke Beck non-material change request](#) was accepted by the SoS on 9 April 2019

*'considerable uncertainty around the current estimates of the in-combination totals' and 'lack of agreed figures and a common method to arrive at them inevitably [leading] to confusion' [REP5-066].*

- 7.8.95. In response [REP8-006], the Applicant explains that the Dogger Bank Creyke Beck non-material change, in their view *'does demonstrate very clearly that for the project in question there is a difference between that worst case (as assessed) and the anticipated actual build out in terms of collision risk for kittiwake.'*

### **Gannet**

- 7.8.96. The focus of NE's submissions to the Examination on the subject of the Flamborough and Filey Coast SPA prior to the publication of the RIES was in respect of impacts to the kittiwake population. Consequently, the ExA asked as an action point at ISH8 [EV-047] for an updated version of the Offshore Ornithology SoCG between NE and the Applicant to specifically reflect the level of agreement regarding in-combination collision risk and the Applicant's conclusion on AEOI for gannet.
- 7.8.97. An updated version of the SoCG was submitted at Deadline 5 [REP5-077], which explained that NE was investigating the implications of in-combination collision mortality with the proposed Norfolk Vanguard offshore wind farm (for gannet).
- 7.8.98. The Applicant's comments on the RIES [REP6-037] note that *'comment or concern from NE on gannet has been limited until Deadline 5...no comment is made in-combination, instead referring to the Statement of Common Ground (REP4C-008) – NE do not make any comment as regards gannet in that version of the SoCG for the FFC SPA'.*
- 7.8.99. In their response to the Applicant's comments on the RIES [REP7-039], NE explained that they were *'not aware of the potential for an adverse effect on integrity of the gannet feature of the Flamborough and Filey Coast SPA in-combination with other OWF until the comprehensive in-combination assessment provided by Norfolk Vanguard at Deadline 6/6.5 of that Examination'.*
- 7.8.100. As such NE's position as presented in the latest SoCG [REP6-015] remains their view, this being:

*'Natural England has reviewed the predicted gannet in-combination mortality total for all relevant projects, using a range of plausible future growth rate scenarios for the Flamborough & Filey Coast SPA gannet colony. For all existing projects plus Thanet Extension and Norfolk Vanguard, but not Hornsea 3, we have concluded that even with the decline in future growth rate predicted to arise from in-combination gannet mortalities (as drawn from the gannet PVA presented at the Hornsea 3 examination and also considered at the Norfolk Vanguard examination), the conservation objectives for this feature are likely to be met. Therefore, based on these realistic assumptions regarding the continued predicted growth of the gannet colony, regarding all existing projects plus Thanet Extension plus Norfolk Vanguard but excluding*



*Hornsea 3, Natural England concludes that there is no adverse effect on integrity on the gannet from Flamborough and Filey Coast SPA from Thanet Extension in-combination. 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 proposal.'*

- 7.8.101. In its final position on matters outstanding [[REP8-003](#)], the Applicant maintains that there would 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*'.

### **ExA conclusions**

- 7.8.102. Having had regard to the information the ExA concludes that the Applicant's approach to the assessment of in-combination effects for the Proposed Development is sufficient. The ExA is aware of NE's '*significant concerns regarding the incomplete baseline surveys for the Hornsea 3 project*' [[REP6-015](#)] and the extent to which it considers this affects the finding of no AEOI in-combination for the Proposed Development.
- 7.8.103. As stated above, the ExA is content that the evidence provided as part of the DCO application and throughout the Examination sufficiently supports the conclusions reached regarding AEOI of the qualifying features for the project alone. The SoCG records specific agreement of these matters with NE in respect of collision risk effects on gannet and kittiwake [[REP6-015](#)].
- 7.8.104. There remain unresolved matters in relation to agreed conclusions between the Applicant and NE. However, NE's concerns in this regard relate purely to the collision mortality effects on kittiwake and gannet in-combination with other plans and projects and principally Hornsea 3. The ExA considers that mortality effects for kittiwake and gannet from the Proposed Development alone and in-combination are *de minimis* and therefore unlikely to be a significant contributor to any conclusion of AEOI. On that basis the ExA is content to conclude that AEOI from the Proposed Development would not occur alone or in-combination with other plans and projects.

### **THANET COAST SAC**

- 7.8.105. The Applicant's conclusion (as presented in the RIAA [[REP2-018](#)] [[REP2-019](#)]) that there would be no AEOI of the chalk reefs qualifying feature of the Thanet Coast SAC was a matter discussed during the Examination. The partially submerged sea caves feature was also discussed to a lesser extent but is also considered in this section.
- 7.8.106. As described in section 7.5 of this Report, the Applicant screened out LSE arising from "accidental pollution" during construction, operation and decommissioning of the Proposed Development on the basis of

embedded mitigation in the form of pollution control plans being in place as part of the Proposed Development [table 6.1, page 6-60 of [APP-031](#)].

- 7.8.107. The revised RIAA [[REP2-018](#)] [[REP2-019](#)] concluded that LSE from accidental pollution at all stages of the Proposed Development would not arise due to the control measures and mitigation in place, but that *'to ensure full compliance with Sweetman II these measures have not been taken into consideration during screening on a precautionary basis'*.
- 7.8.108. The Applicant provided information to inform an appropriate assessment of the Thanet Coast SAC in sections 11.2 (project alone) and 12.2 (in-combination with other plans and projects) [[REP2-018](#)] [[REP2-019](#)]. The revised RIAA screened in construction and operational effects of accidental pollution and the Applicant is of the view that the production, agreement and implementation of relevant plans with the MMO and NE would address any concerns around accidental pollution during construction, operation and decommissioning. These measures are summarised in table 7.15 of [[APP-048](#)] and section 11.2 of [[REP2-018](#)] [[REP2-019](#)], with reference to a PEMP being produced to cover the construction, operation and maintenance phases (incorporating plans to cover accidental spills and potential contaminant release).
- 7.8.109. NE has agreed that there would be no LSE on the 'submerged or partially submerged sea caves' qualifying feature in response to ExQ 1.1.6 [[REP1-116](#)]. In their comments on the RIES [[REP6-037](#)], the Applicant points out that this feature was screened in for LSE for the avoidance of doubt in the revised RIAA [[REP2-018](#)] [[REP2-019](#)] in order to be compliant in light of the Sweetman II judgement. By extension to NE's agreement of no LSE, it follows that they are content to exclude AEoI.
- 7.8.110. No other substantive submissions were made to question the conclusions reached in the RIAA that there would be no AEoI on any of the qualifying features from accidental pollution during all phases of the Proposed Development. Agreement with the Applicant's conclusion from NE is reflected in the SoCG [[REP6-016](#)].
- 7.8.111. Table 3.1 of the RIES sets out the impact pathways for which LSE was concluded by the Applicant [[PD-018](#)], and the following sections of this chapter therefore consider the issues examined around AEoI along and in-combination (in respect of chalk reefs) for:
- Temporary habitat loss & disturbance;
  - Increased suspended sediment & deposition; and
  - Physical processes.

### **Temporary habitat loss & disturbance**

- 7.8.112. The RIAA submitted with the DCO application showed the Thanet Coast SAC as being crossed by the proposed Offshore Export Cable Corridor (OECC) [Figure 9.1, [APP-031](#)]. In its RR [section 2.2.2, [RR-053](#)], NE stated that it had outstanding concerns regarding impacts from the Proposed Development on the chalk reefs qualifying feature due to habitat loss and disturbance.

- 7.8.113. In [REP1-113], NE confirmed that a number of commitments made by the Applicant during pre-examination discussions *'removed many of its concerns regarding the potential effects on the Thanet Coast SAC.'*
- 7.8.114. The Applicant's dDCO at Deadline 1 [revision A, REP1-068] secured as a condition in the DML the CEZ that had been identified as part of the original application [APP-042] but not included within the draft DCO at that time. The revised RIAA submitted at Deadline 2 illustrated that the area of overlap between the red line boundary and Thanet Coast SAC was now covered by the CEZ (Figure 9.1, [REP2-018] [REP2-019]). The CEZ [Figure 11.6, REP2-019] ensures that the construction (and subsequent decommissioning) of the Proposed Development would only result in disturbance to the Thanet Coast SAC as a result of anchoring etc and not direct cable installation [paragraph 11.2.15, REP2-019].
- 7.8.115. No chalk reef feature has been identified during site specific surveys undertaken by the Applicant (paragraph 11.2.16 of [REP2-019]; the extent of these surveys is shown in Figure 4.1 of [REP4-025]).
- 7.8.116. The Applicant is of the view that there would be no direct temporary loss or disturbance of the chalk reef qualifying feature during construction or decommissioning and therefore no AEoI of the site (project alone) [paragraph 11.2.18, REP2-019].
- 7.8.117. NE noted in [REP3-075] their satisfaction with the CEZ and that the cable route now fully avoids all chalk reef features of the SAC. The Applicant confirmed that the need for micro-siting would not be required for the cable route within the Thanet Coast SAC, as no cable would be laid within the SAC [REP4-005]. NE has also agreed that *'There are no further mitigation measures beyond those outlined in the RIAA are necessitated as a result of the assessment conclusions for the Thanet Extension project alone'* (in relation to the cable exclusion zone around the Thanet Coast SAC) [REP6-016].

#### **Increased suspended sediment and deposition**

- 7.8.118. The Applicant considers that the magnitude of potential changes in total suspended sediment during construction is greater than any during operation and maintenance and so the conclusions remain valid for operational effects. The ExA agrees with this conclusion, which has not been disputed by any IPs.
- 7.8.119. The Applicant explained that the magnitude of a change in total suspended sediment would be low during construction and not significant (paragraphs 11.2.42 – 11.2.44 of [REP2-018] [REP2-019]). The Applicant acknowledges there is potential for such sediment to reach the designated chalk reef feature. Literature cited by the Applicant and produced specifically for the SAC found that the reefs have a *'low sensitivity'* to physical damage through siltation (footnote 78 of [REP2-018] [REP2-019]).
- 7.8.120. The Applicant therefore concluded that the site's conservation objectives would be maintained in the long-term and there is no AEoI of the chalk

reef feature of the Thanet Coast SAC in relation to temporary and short-term increased suspended sediment and associated deposition.

- 7.8.121. At Deadline 3, in response to the revised RIAA, NE's view was that further consideration needed to be given to impacts, sensitivity and recoverability of habitats to deposition of material from sand wave clearance/ disposal including the habitat and size of area affected, and how disposal areas would avoid protected sites and areas of habitats of conservation interest [REP3-075]. In particular, NE were unclear as to whether the Applicant's assessment was based on an even distribution of disposal occurring across the cable corridor (therefore potentially underestimating effects if disposal were to be at discrete locations having a larger, more focused impact) [REP3-075].
- 7.8.122. The Applicant set out in table 14.1 of [REP4-019] that the scenario assessed is based on a worst case in terms of potential requirements for sand wave clearance, and assumptions allow for either broadscale uniform distribution across a wider area, or discrete disposal across smaller areas (paragraphs 14.7.9, 14.7.11, 14.7.28 and 14.7.29 of [REP4-019]). A further revision to the 'Sand Wave Clearance, Dredging and Drill Arising: Disposal Site Characterisation' document was provided at Deadline 5 [REP5-038].
- 7.8.123. At Deadline 5, the Applicant also submitted a 'SAC and MCZ Clarification Note' [REP5-047] relating to the Thanet Coast SAC in response to ISH8 action points 10 and 16 [EV-045 and EV-046]. The document prepared by the Applicant was also in response to specific outstanding questions they received from NE on 12 April 2019 (around suspended sediment and deposition associated with cable laying activities and sand wave clearance) and included a tabulated summary of implications for the Thanet Coast SAC.
- 7.8.124. At this point, the ExA notes that comments being made by NE and responded to by the Applicant in the 'SAC and MCZ Clarification Note' [REP5-047] largely relate to impacts on the Goodwin Sands MCZ (considered elsewhere in this Recommendation Report) as opposed to disagreement of AEOI to the Thanet Coast SAC. The Applicant similarly noted this in their comments on the RIES, and that in respect of Matrix 1 of the RIES '*The Applicant would highlight that matters regarding the MCZ are not pertinent to the HRA process*'.
- 7.8.125. In the final SoCG between the Applicant and NE, it is agreed that there would be no AEOI on the Thanet Coast SAC alone or in-combination with other plans and projects (Table 3 of [REP6-016]). This agreement specifically cites additional submissions from the Applicant at Deadline 5 (namely the SAC and MCZ Clarification Note [REP5-047] and the '*Sand Wave Clearance, Dredging and Drill Arising: Disposal Site Characterisation document*' [REP5-038]). This agreement is also reflected in NE's comments on the RIES [REP6-095]: '*agreement has been reached with the Applicant that there will be no AEOI both alone and in-combination on the Thanet Coast SAC*'. [REP6-095] also provides NE's

comments on the Applicant's 'SAC and MCZ Clarification Note' [[REP5-047](#)].

### **Physical processes**

- 7.8.126. As recorded in Matrix 1 of the RIES [[PD-018](#)], the presence of foundations, scour protection and cable protection material during operation of the Proposed Development may introduce changes to the local hydrodynamic and wave regime, resulting in potential changes to benthic ecology and habitat suitability for some species.
- 7.8.127. The ES determined that any such impacts would be highly localised and of short to medium term duration [[APP-043](#)] with a 'negligible' risk for intertidal and subtidal habitats, including the chalk reef feature of the SAC. Therefore, the Applicant concludes no AEOI (paragraphs 11.2.103 – 11.2.105 of [[REP2-018](#)] [[REP2-019](#)]).
- 7.8.128. These conclusions for the Proposed Development alone have not been disputed by NE or other IPs and in this respect, the ExA also notes agreement of no AEOI alone and in-combination is also reflected in NE's comments on the RIES [[REP6-095](#)].

### **In-combination effects**

- 7.8.129. The Applicant was of the view that no plans or projects needed to be screened in to an in-combination assessment for subtidal and benthic intertidal habitats as there is '*no temporal overlap or the chances of any temporal overlap between those plans and projects identified in Table 12.2 [of the RIAA]*' (paragraph 12.2.1 of [[REP2-018](#)] [[REP2-019](#)]). Therefore, no AEOI in-combination on all features of the Thanet Coast SAC was predicted by the Applicant.
- 7.8.130. NE stated [[REP3-074](#)] that it required further clarification regarding the potential in-combination effects from dredging and disposal at Ramsgate Harbour; noting in [[REP3-042](#)] that it had provided information to the Applicant regarding some licenced dredging activities at Ramsgate Harbour for this purpose. However, NE did not anticipate that any such clarification by the Applicant '*would materially affect the outcome of the relevant assessments*' [[REP3-074](#)].
- 7.8.131. KWT and NE also raised the issue of an in-combination assessment of the Dover Harbour Board's consent from the MMO to dredge part of the Goodwin Sands pMCZ [[RR-048](#) and [RR-053](#)]. The Applicant understood that works in connection with the Dover Harbour Board's consent were anticipated to be undertaken between September 2019 and 2020 (with offshore works in connection with the Proposed Development anticipated to be undertaken between Q1 2021 and Q2 2023) and as such considered there is no potential for temporal overlap of activities (Q1.1.46 [[REP1-024](#)]). The ExA understands that this consent is now the subject of a judicial review (NE-124 of [[REP1-017](#)]) and therefore, there is some uncertainty about the previously presented timescales.

- 7.8.132. As described above, the Applicant submitted a "SAC and MCZ Clarification Note" at Deadline 5 [[REP5-047](#)], where they presented conflating information in respect of both the Thanet Coast SAC and the Goodwin Sands MCZ. The ExA's consideration of matters relating to the MCZ are presented in Chapter 5 of this Report.
- 7.8.133. At Deadline 5, the Applicant also presented a revised version of the "Sand Wave Clearance, Dredging and Drill Arising: Disposal Site Characterisation" document at Deadline 5 [[REP5-038](#)]. Sections 1.6 and 1.7 of [[REP5-047](#)] refer to the in-combination effects of the Dover Harbour Board consent and the Proposed Development on Thanet Coast SAC. The Applicant identifies that the effects of the Proposed Development represent a much smaller extent within the MCZ (as opposed to the SAC) than those from the Dover Harbour Board consent when considering the combined effect (section 1.6, paragraph 41 of [[REP5-047](#)]). The Applicant remains of the view that there would be no AEOI of the Thanet Coast SAC alone and in-combination (including potential effects from suspended sediment and deposition associated with the cable installation and wider cable design envelope including sand wave clearance and cable protection) [section 1.7, [REP5-047](#)].
- 7.8.134. No further comments were received from NE at Deadlines 6 or 7 that raised any concerns with the Applicant's Deadline 5 submissions in respect of the Dover Harbour Board consent.
- 7.8.135. As cited above, NE's agreement of no AEOI in-combination with other plans and projects is also reflected in NE's comments on the RIES [[REP6-095](#)]: *'agreement has been reached with the Applicant that there will be no AEOI both alone and in-combination on the Thanet Coast SAC'*.

### **ExA conclusions**

- 7.8.136. The ExA has had regard to the information and finds that the Applicant's conclusions of no AEOI alone and in-combination with other plans and projects is satisfactory. In particular, the CEZ secured as part of the DCO would act to exclude any direct impacts within the boundary of the Thanet Coast SAC.
- 7.8.137. The ExA agrees with the view of the Applicant (supported by NE) that the production, agreement and implementation of relevant plans with the MMO and NE would avoid AEOI from accidental pollution during construction, operation and decommissioning of the Proposed Development. The ExA is also content that these plans are sufficiently secured though provisions in the DCO, as set out above.
- 7.8.138. Table 6.1 of the RIAA [[REP2-018](#)] [[REP2-019](#)] outlines embedded mitigation for the project which includes pre-construction surveys that would be undertaken in advance of construction and that, should chalk reef be identified during these surveys, then these would be subject to the Biogenic Reef Mitigation Plan [[REP4-025](#)]. In particular, the ExA also recognises the relatively localised and short-term nature of the works in respect of the SAC, and that operational effects are not likely to affect the long-term maintenance of the chalk reefs feature of the SAC.

- 7.8.139. The ExA agrees with the findings and conclusions of the Applicant's 'Sand Wave Clearance, Dredging and Drill Arising: Disposal Site Characterisation' document [REP5-038], and that the chalk reefs have a "low sensitivity" to physical damage through siltation as demonstrated by cited literature (footnote 78 of [REP2-018] [REP2-019]).
- 7.8.140. The ExA is content with the Applicant's conclusions (also supported by NE) that the Proposed Development would not result in AEOI of the Thanet Coast SAC, either alone or in-combination with other plans and projects [REP6-016] [REP6-095]. The ExA acknowledges the ongoing judicial review of the Dover Harbour Board's consent but is ultimately content that the Applicant's position in relation to in-combination effects is based on the best available evidence as to the potential for a worst-case temporal overlap between these projects and is therefore robust. If the Dover Harbour Board's works were to be delayed or not proceed, the scope for temporal overlap would reduce from worst case, or alternatively there would be none.

## **SOUTHERN NORTH SEA SAC**

- 7.8.141. The Applicant concluded that there would be no AEOI alone or in-combination with other plans and projects on harbour porpoise as the single qualifying feature of the SAC [REP2-018] [REP2-019].
- 7.8.142. As described in section 7.5 of this Report, the Applicant screened out LSE arising from "accidental pollution" during construction, operation and decommissioning of the Proposed Development on the basis of embedded mitigation in the form of pollution control plans being in place as part of the Proposed Development (table 6.1, page 6-60 of [APP-031]).
- 7.8.143. The revised RIAA [REP2-018] [REP2-019] concluded that LSE from accidental pollution at all stages of the Proposed Development would not arise due to the control measures and mitigation in place, but that '*to ensure full compliance with Sweetman II these measures have not been taken into consideration during screening on a precautionary basis*'.
- 7.8.144. The Applicant provided information to inform an appropriate assessment of the Southern North Sea SAC in sections 11.3 (project alone) and 12.3 (in-combination with other plans and projects) [REP2-018] [REP2-019]. The revised RIAA screened in construction effects of accidental pollution and the Applicant is of the view that the production, agreement and implementation of relevant plans with the MMO and NE would address any concerns around accidental pollution during construction, operation and decommissioning. These measures are summarised in Table 7.15 of [APP-048] and paragraphs 11.3.3 – 11.3.4 and 11.3.103 -11.3.105 of [REP2-018] [REP2-019], with reference to a PEMP being produced to cover the construction, operation and maintenance phases (incorporating plans to cover accidental spills and potential contaminant release).
- 7.8.145. The implementation of the PEMP is provided for in the dDCO as part of DML conditions 13 (generation assets) and 11 (export cable system) [REP8-013].

- 7.8.146. Paragraphs 12.3.2 – 12.3.4 (construction and decommissioning) and 12.3.54 – 12.3.56 (operation and maintenance) of [\[REP2-018\]](#) [\[REP2-019\]](#) confirm the Applicant's rationale and conclusions in-combination with other plans and projects in respect of accidental pollution are the same.
- 7.8.147. These conclusions have not been disputed by any IPs during the Examination and the agreement with the revisions to the RIAA and the conclusions of no AEOI in light of the Sweetman judgement are specifically referenced in the SoCG between NE and the Applicant [\[REP6-016\]](#).
- 7.8.148. The MMO stated in response to the ExQ1 (Q1.1.35 of [\[REP1-107\]](#)) that it 'defers to the advice of the Statutory Nature Conservation Bodies (SNCBs) for advice on HRA', and therefore has not directly disputed the Applicant's conclusions of no AEOI during the Examination.
- 7.8.149. KWT also expressed their view regarding the proposed mitigation measures and noise level monitoring in respect of harbour porpoise in its WR [page 25, [REP1-102](#)].
- 7.8.150. Paragraph 4.2.40 of the RIES [\[PD-018\]](#) stated that the focus of the Examination in relation to the Southern North Sea SAC has centred on a disagreement over the AEOI conclusions relating to increases in underwater noise during construction and decommissioning of the Proposed Development (both alone and in-combination with other plans and projects).
- 7.8.151. In their comments on the RIES [\[REP6-037\]](#), the Applicant sought to clarify the understanding:  
  
*'The Applicant would question if the focus of discussion on the Southern North Sea SAC has been in relation to a disagreement on the AEOI conclusions (specifically in relation to underwater noise). The Applicant considers the focus of the discussion to have been around how mitigation will be identified, provided and secured to provide the necessary certainty that no AEOI will result. In effect, the discussion has not been around the conclusion of no AEOI but about how the MMO will manage provision of the mitigation – as delivered in the MMMP and SIP and delivered through conditions in the draft DCO.'*
- 7.8.152. The Applicants view was shared and endorsed by NE at [\[REP7-039\]](#) which stated 'that the disagreement in relation to AEOI in-combination for the Southern North Sea SAC, and thus the ongoing discussions, has been centred on the management of the mitigation measures'.
- 7.8.153. In sections 4.6 (page 12) and 5.4 (page 27) of its RR [\[RR-053\]](#), NE raised initial concerns with the assessment including:
- exclusion of 'Tier 2' projects from within the in-combination assessment;
  - apparent exclusion of in-combination assessment of average oil and gas activities based on historic activity and the Marine Noise Registry



(which was in NE's view presented in 7.14.52-57 and Figures 7.26 and 7.27 of the ES [APP-048]);

- the assumed effectiveness of 'soft start' piling equipment techniques mitigation and the potential underestimation of the piling impacts in the Applicant's modelling; and
- the Applicant's assertion in Table 12.2 and paragraphs 12.3.15 and 12.3.19 of the original RIAA [APP-031] that there is no prospect of temporal overlap between piling activities of the Proposed Development and that of the East Anglia 1, Hornsea 3, or Norfolk Vanguard projects.

7.8.154. NE also expressed a view that an additional condition should be included as part of the generation assets DML (to require the production of a Site Integrity Plan (SIP)) and some adjustments made to the wording of the existing DML condition in relation to the Southern North Sea SAC and the potential for significant impacts on harbour porpoise [pages 15 and 16, RR-053].

7.8.155. The Applicant responded to NE's points in [REP1-017] and revised the marine mammal in-combination assessment to include new project information (post June 2018) and to include consideration of Tier 2 projects (table 4.2, [REP2-018] [REP2-019]). In [REP3-075], NE welcomed the inclusion of Tier 2 projects in the in-combination assessment.

7.8.156. In response to ExQ1.1.22 [REP1-116], NE confirmed they were content with the approach to the Applicant's assessment of 'soft start' piling.

7.8.157. The ExA is aware that following the designation of the Southern North Sea cSAC/SCI in January 2017, there is a statutory requirement for the BEIS and the MMO to undertake a review of certain projects that may be affected by the designation. This is described at paragraphs 4.2.47 – 4.2.48 of the RIES [PD-018].

7.8.158. This Review of Consents process was ongoing at the close of the Examination and no further substantive submissions on the subject were received during the Examination, beyond those referenced at paragraphs 4.2.47 – 4.2.48 of the RIES [PD-018]. [REP6-016] records the latest position as part of the Applicant's SoCG with NE: *'The BEIS Review of Consents (RoC) has concluded that as long as Site Integrity Plans (SIPs) are placed on all DCOs (in relation to HRA and in combination impacts on the Southern North Sea SCI for harbour porpoise), there will be no adverse impact on site integrity'*.

7.8.159. NE remained concerned in relation to a lack of clarity as to how the SIP conditions ensure that mitigation would be put in place to prevent exceedance of the SNCB thresholds for disturbance, advising that *'A process will need to be developed by the regulators to ensure continuing adherence to the SNCB thresholds as multiple SIPs are developed over time, especially when piling can take place over several years, and new projects can come online during this time. Should potential exceedance of the thresholds occur, a process for dealing with this issue needs to be in place – the affected developers / industries will need to work together*

*with the regulator and SNCBs to prevent adverse effect on the SCI'* [Q1.1.27, [REP1-116](#)].

- 7.8.160. The Applicant provided multiple iterations of the SIP throughout the Examination ([\[REP2-033\]](#), [\[REP4-022\]](#) and [\[REP6-077\]](#)), to which the MMO and NE provided comments as follows.
- NE: 'Until the mechanism by which the SIPs will be managed, monitored and reviewed is developed, NE 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' [Table 3, [REP3-075](#)].
  - MMO: [\[REP3-078\]](#) and Table 9 of [\[REP3-039\]](#), in particular: '*...noting that the purpose of a SIP to ensure no risk to Adverse Effect on Integrity (AEoI), MMO seek clarity on how it will be demonstrated that the project will stay within the thresholds and conclusions in the HRA.*'
  - MMO: Sought revised DML wording around cessation of piling activities and notification where noise levels may be greater than previously predicted (in order to agree any potential additional monitoring or mitigation measures) [paragraph 2.1.3, [REP3-078](#)]. Without such revisions, '*the MMO's power is limited to instructing on the need for additional monitoring only, with no remit to instruct cessation of piling whilst this is explored.*'
- 7.8.161. In respect of the Outline SIP, the Applicant maintained its position that developing a mechanism to "*manage, monitor and review the various SIPs anticipated to come forward*" is outside of its jurisdiction, and that the RIAA [\[REP2-018\]](#) [\[REP2-019\]](#), MMMP [\[APP-146\]](#) and Outline SIP [\[REP6-077\]](#) provide certainty that an AEoI would be avoided with respect to the SAC. The Applicant also stated that '*the mitigation is wholly within the ability of the Applicant to deliver (with no ambiguity as regards its success), with sign off required from MMO on the appropriateness of that mitigation through the SIP process*' [\[REP4-005\]](#).
- 7.8.162. In their comments on the RIES, the Applicant outlined their position that the requirement to deliver on the MMMP and SIP are both provided for in the DCO, including a need for agreement with the MMO on these documents before the commencement of works [\[REP6-037\]](#).
- 7.8.163. The Applicant is also of the view that there is sufficient certainty of the current SIP provisions through a combination of the seasonal variability of harbour porpoise presence within the SAC and the location of the Proposed Development (in respect of the winter and summer extents of the species as shown in Figure 9.5 and described at paragraph 9.6.4 and 9.6.5 of [\[REP2-018\]](#) [\[REP2-019\]](#)). The Applicant argued that these points combined indicated that any noisy works at the Proposed Development during the summer season (April to September inclusive) would not be relevant to features of the SAC identified through the HRA process (the Proposed Development being at least 229km from the summer extents of the Southern North Sea SAC and therefore beyond the maximum 26km screening distance) [\[REP4-005\]](#). In the WR of KWT, concerns were expressed over the appropriateness of splitting the Southern North Sea

SAC into summer and winter units [[REP1-102](#)], though this does not appear to be disputed or raised as an issue by any other IPs.

- 7.8.164. The Applicant stated that only works in the winter season (October to March inclusive) have the potential to contribute to the thresholds, and maintains that *'the inclusion in the mitigation of a seasonal restriction means the mitigation is wholly within the ability of the Applicant to control, commit to and deliver'*, and that *'The actual need for such a seasonal restriction (if any) will be determined at the point the SIP is drafted, and may in practice result in a single winter season being excluded, or a single month, or a combination or no restriction. The mitigation does not require different construction techniques, different infrastructure or additional equipment on site, nor does it require liaison or discussion with other developers'* [[REP4-005](#)].
- 7.8.165. In the final SoCG between NE and the Applicant at Deadline 6 [[REP6-016](#)], the position held 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.'*
- 7.8.166. [[REP6-016](#)] also states that the Applicant has committed to a seasonal restriction, if the mechanism to manage the SIPs is not agreed. NE remain of the view that this seasonal restriction should be specifically secured within the terms of the DCO/ DML to ensure it is enforceable. In absence of this, NE's position is therefore that the risk of AEOI in-combination on the Southern North Sea SAC remains [[REP6-016](#)].
- 7.8.167. In the Applicant's response to NE's Deadline 5 Submissions [[REP5-064](#)] regarding HRA matters (section 5, paragraphs 7-10 of [[REP6-065](#)], the Applicant welcomes NE's view that *'...commitments made within the SIP regarding the mitigation methods described in section 4, specifically; undertaking management of project activities to ensure the project remains within thresholds, AND/OR liaison with MMO to determine if the in-combination effect could be managed so as to remain within the thresholds, AND/OR a seasonal restriction for Thanet Extension, enabling works to be planned in a manner that avoids exceeding the thresholds. Natural England considers these commitments should be secured in the DCO/DML to ensure they are enforceable. This would also allow Natural England to conclude no Adverse Effect on Integrity on the harbour porpoise feature of the Southern North Sea SAC.'*
- 7.8.168. The Applicant's position at section 5, paragraphs 7-10 of [[REP6-065](#)] is that *'The Applicant would respectfully highlight that the mitigation measures are currently provided for within the DCO/DML, as these form the key point of the SIP...'*. They also consider that the cited Generation Assets and Export Cable System DML conditions (condition 13 of Schedule 11 and condition 11 of Schedule 12) *'refer specifically to the Draft/Outline Site Integrity Plan (REP4-022), which contains the mitigation measures referenced by NE, and that licensed activities cannot*

*commence until the SIP has been approved in writing by the MMO within the required timeframe’.*

- 7.8.169. NE did not comment on these points at Deadline 7 [[REP7-037](#)].
- 7.8.170. The Applicant’s final position on matters outstanding at Deadline 8 [[REP8-003](#)] notes NE’s agreement that if the Applicant were to accept a voluntary seasonal restriction, there would be no AEoI on the Southern North Sea SAC [[REP6-016](#)].
- 7.8.171. NE and the Applicant remain in disagreement over how best to secure this potential (and voluntary) mitigation measure. The Applicant recognises NE’s wish to have a seasonal restriction ‘on the face’ of the DCO but it *‘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’* [[REP8-003](#)].

### **ExA Conclusions**

- 7.8.172. The ExA has had regard to the information and is satisfied with the Applicant’s approach to determination of AEoI alone and in-combination, and that the relevant plans and projects have been considered in respect of the latter.
- 7.8.173. Table 7.15 of [[APP-048](#)] and paragraphs 11.3.3 – 11.3.4 and 11.3.103 - 11.3.105 of [[REP2-018](#)] [[REP2-019](#)] refer to a PEMP being produced, incorporating plans to cover accidental spills and potential contaminant release. Implementation of the PEMP is secured in the dDCO as part of DML conditions 13 (generation assets) and 11 (export cable system) [[REP8-013](#)]. On this basis, the ExA therefore agrees that there would be no AEoI on the Southern North Sea SAC from accidental pollution during any phase of the Proposed Development, alone or in-combination with other plans and projects.
- 7.8.174. The ExA is also satisfied the Proposed Development alone would not result in AEoI to the Southern North Sea SAC, and that sufficient provision is made in the MMMP [[APP-146](#)] and Table 6.1 of the revised RIAA [[REP2-018](#)] [[REP2-019](#)] which together set out the mitigation measures included in the context of protecting of marine mammals. The conclusion of no AEoI is also specifically agreed with NE in their SoCG [[REP6-016](#)] and cited by the Applicant in paragraph 133 of their final position statement [[REP8-003](#)].
- 7.8.175. In particular, the ExA is aware of the complexity around the assessment of in-combination effects given uncertainties in relation to the timescales of activities associated with other projects as evidenced by:
- The concerns of NE around the potential for temporal overlaps between piling activities of the Proposed Development and that of the East Anglia 1, Hornsea 3, or Norfolk Vanguard projects; and

- The SoS' Review of Consents process<sup>188</sup> in relation to the Southern North Sea SAC that overlapped with the Examination and which remains ongoing.
- 7.8.176. As set out in the previous sections, the issues therefore surround certainty in concluding no AEoI to the SAC when these plans are considered in-combination, and when so much uncertainty remains about the timescales (and potential concurrency) of these projects.
- 7.8.177. The outline SIP produced during the Examination [[REP6-077](#)] (with a 'final SIP' to be submitted for approval post final scheme design and prior to commencement of construction) explains that, given the location of the Proposed Development and seasonality of the SAC, only 'noisy works' during the winter season (October to March) have the potential to contribute to exceedance of relevant thresholds.
- 7.8.178. A complete winter season restriction on noisy activity could be implemented, resulting in no contribution to the thresholds and effectively removing the Proposed Development from all HRA considerations for the SAC, but the need for such a seasonal restriction (if any) would be determined at the point the final SIP is drafted, and may in practice result in a single winter season being excluded, or a single month, or a combination or no restriction.
- 7.8.179. The above mitigation measures, in the view of the Applicant '*provide certainty that the risks identified within the RIAA...can continue to be addressed through management of activities*' [[REP6-077](#)]. The ExA agrees that there is no ambiguity in additional mitigation options (ie no need for consideration of alternative techniques, equipment etc). An absolute seasonal restriction could be delivered through the final SIP, if it was indeed required.
- 7.8.180. The provision of a final SIP is secured through DML conditions 13 and 11 (Schedules 11 to 12 of the DCO [[REP8-013](#)] respectively) and secures that it must be in accordance with the outline SIP [[REP6-077](#)] and be approved in writing by the MMO in consultation with NE before any licensed activities or any part of those activities under the DML can commence. This could include a full seasonal restriction (if required) and would be subject to the appeals and arbitration provisions (parts 5 and 6 of the DML) where there was dispute between the Applicant and MMO regarding the basis for any written approval being withheld.
- 7.8.181. The ExA therefore agrees with the Applicant that inclusion of a seasonal restriction on the face of the DML is unnecessary and that sufficient provisions are made for this restriction with the approval of the final SIP under conditions within the DML. The ExA also notes that there were ongoing discussions between the MMO, NE and the Applicant regarding the MMO's general statutory powers which may allow them to enforce the cessation of piling activities. This was explored in item 16 of the ExA's commentary of the DCO [[PD-017](#)]. The Applicant's comments on this, as

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<sup>188</sup> [Review of Consents](#) process in relation to the Southern North Sea SAC.

well as those of IP's, are summarised in [REP7-006]. The ExA is satisfied that the provisions of the DML (condition 17(3) of schedule 11 condition 16(3) schedule 12) and MMMP alongside the provisions of section 102 of the MACAA2009 would ensure that potential risks to marine mammals during construction is reduced. In any case, NE is of the view in [REP6-092] '*This issue is not related to the SIP and our current advice regarding AEOI on the SNS SAC*'.

7.8.182. The ExA therefore considers that a conclusion of no AEOI alone and in-combination can be reached on the bases of the SIP provisions in the DML and other plans securing mitigation including the MMMP.

## **7.9. ALTERNATIVES, COMPENSATORY MEASURES & IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST**

7.9.1. As set out in section 5 of the RIES [PD-018], the Applicant and IPs were invited to provide their views as to whether there may be a need for SoS (as the Competent Authority under the Habitats Regulations) to consider the application of alternatives and imperative reasons of overriding public interest (IROPI) under the HRA process.

7.9.2. Responses were invited for Deadline 5 of the Examination based on NE's position that AEOI could not be ruled out in relation to:

- Outer Thames Estuary SPA;
- Flamborough and Filey Coast SPA; and
- Southern North Sea SAC.

7.9.3. The ExA is mindful that the SoS as Competent Authority may conclude that AEOI alone or in-combination cannot be excluded for one or more of these European sites, and in which case, they would need to explore the extent to which alternative solutions, compensatory measures and IROPI have been considered prior to granting development consent for the Proposed Development.

7.9.4. In particular, the Applicant notes that their comments at [REP5-066] in this regard were without prejudice and that '*compensatory measures can only be formally considered after a negative assessment under regulation 63 and where in the absence of alternatives and the presence of IROPI (regulation 64), the competent authority is minded to approve the plan or project*'.

7.9.5. The Applicant made no response to section 5 of the ExA's RIES [REP6-037]. NE responded at [REP6-095] noting that this section of the RIES '*is an accurate representation of the brief discussions that have taken place regarding alternatives, IROPI and compensatory measures*'. No further submissions on these matters were received during the subsequent deadlines in the Examination.

7.9.6. At this point the ExA refers the SoS to the general findings and conclusions in Chapter 9 of this Report. There, for reasons that are not

principally associated with HRA or effects on the natural environment, habitats or species, the ExA finds that there are outstanding breaches of NPS and related policy that have not been addressed and adverse effects of development which outweigh the benefits of development. It recommends that development consent should be withheld on that basis. If the SoS was minded to accept the basis for that recommendation, it should be noted that this would counter any argument that the policy compliant and beneficial renewable energy generation benefits of the Proposed Development were sufficient to establish IROPI. In this respect the ExA advises that, if the SoS considers IROPI to be applicable, such a position would most likely need to be justified on the basis that the SoS disagrees with the ExA's recommendation in Chapter 9 and hence finds that the policy compliant and beneficial renewable energy generation benefits of the Proposed Development are sufficient to establish IROPI.

7.9.7. Such matters will be for the SoS to consider in discharging their duties under the Habitats Regulations, taking into account the findings and recommendations set out in this Report when discharging their duties under the Habitats Regulations.

## **7.10. OVERALL HRA CONCLUSIONS**

7.10.1. On the basis of the submissions and evidence reviewed in this Chapter and in relation to European sites within the jurisdiction of the UK, the ExA reaches the following overarching conclusions.

- The ExA notes the Applicant's conclusion of no AEOI on the following sites has not been disputed and considers that it would be reasonable for the SoS to reach the same conclusion in relation to the impacts of the Proposed Development both alone and in-combination:
  - Alde-Ore Estuary SPA (matrix 34);
  - Alde-Ore Estuary Ramsar (matrix 35);
  - Farne Islands SPA (matrix 38);
  - Foulness (Mid-Essex Coast Phase 5) SPA (matrix 33)
  - Margate and Long Sands SAC (matrix 25);
  - Northumberland Marine SPA (matrix 37); and
  - St Abb's Head to Fast Castle SPA (matrix 39).
- The ExA notes disputed conclusions in relation to AEOI on the following sites:
  - Thanet Coast and Sandwich Bay SPA with Thanet Coast and Sandwich Bay Ramsar site;
  - Outer Thames Estuary SPA;
  - Flamborough and Filey Coast SPA;
  - Thanet Coast SAC; and
  - Southern North Sea SAC.
- In relation to the Thanet Coast and Sandwich Bay SPA with Thanet Coast and Sandwich Bay Ramsar site, the ExA does not agree with KWT that there would be an AEOI. The proposed SMRMP (and its associated provisions) would be sufficient to reduce impacts such that no AEOI on any of the qualifying features of the Thanet Coast and

Sandwich Bay SPA and Thanet Coast and Sandwich Bay Ramsar site would occur.

- In relation to the Outer Thames Estuary SPA and the red-throated diver, the ExA notes methodological concerns between the Applicant and relevant IPs. However, the ExA is satisfied that sufficient evidence has been provided to demonstrate no AEOI on this feature in relation to the Proposed Development alone. In relation to in-combination effects, the ExA notes but takes the view from NE evidence that the contribution from the Proposed Development whilst apparent is beneath any the threshold of significance and *de minimis*, noting also in reaching that conclusion that the great majority of the contribution to NE's concern arises from other projects that have been consented and are already operational.
- In relation to the Flamborough and Filey Coast SPA, the ExA is satisfied that sufficient evidence has been provided to demonstrate no AEOI on the gannet and kittiwake features in relation to collision risk effects arising from the Proposed Development alone. In relation to in-combination effects, the ExA notes outstanding concerns from NE about kittiwake and gannet mortality but takes the view from NE evidence that the remaining uncertainty arises from other projects and that the contribution from the Proposed Development is so small as to be *de-minimis*, entitling the SoS to reach a finding of no AEOI in-combination.
- In relation to the Thanet Coast SAC, the ExA finds that, subject to the provision of adequate security for and delivery of the Proposed Development inclusive of the CEZ, there would be no AEOI alone or in-combination on any features of this site.
- In relation to the Southern North Sea SAC, the ExA finds that the provisions of the proposed SIP and the MMMP would be sufficient to apply relevant seasonal construction restrictions to avoid AEOI relating to marine mammal features alone and in combination.

7.10.2. Drawing these findings together, the overarching conclusion of the ExA is that that there are no AEOI on any feature of any European Site due to the Proposed Development alone or in combination. Nevertheless, it should be noted that there are three European sites in which the ExA has been advised of extant but insignificant effects in respect of which it has formed a view that these are *de minimis*:

- Outer Thames Estuary SPA;
- Flamborough and Filey Coast SPA; and
- Southern North Sea SAC.

7.10.3. Should the SoS as Competent Authority disagree with the ExA's conclusions and form the view that in respect of any one or more of these sites there are remaining AEOI, consent can only be granted if there are no alternative solutions (stage 3) and if so, there are IROPI for the development and compensatory measures have been secured (stage 4) <sup>189</sup>.

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<sup>189</sup> See Planning Inspectorate [Advice Note Ten \(AN10\)](#).



- 7.10.4. In respect of HRA stage 3, the Applicant's position remains that the contribution of the Proposed Development would not be significant and hence that there is no reasonable alternative that can be deployed that would address an AEOI. Essentially here, if the SoS does not accept the ExA's findings on the Outer Thames Estuary SPA, Flamborough and Filey Coast SPA and/ or Southern North Sea SAC because there are considered to be remaining AEOI, in the absence of alternatives, the SoS would need to proceed to HRA stage 4.
- 7.10.5. In HRA stage 4, there would be an interaction between the findings in this Chapter and the ExA's broader findings on the planning balance in Chapter 9 of this Report. There, for reasons unrelated to HRA, the ExA finds broadly that the Proposed Development does not comply with NPS policy and also that its benefits are outweighed by its adverse effects. In that regard, IROPI of a social or economic nature or reliant on the important environmental benefits flowing from renewable energy generation would need to proceed from the proven renewable energy generation benefits of a policy compliant development, within the need case established by NPS EN-1. However, because the ExA finds that NPS policy is not complied with in respect of shipping and navigation and that the benefits from other policy compliance are outweighed in the planning balance by adverse effects, to make a finding that there are IROPI of a social or economic nature, or relating to the important environmental benefits of the Proposed Development, the SoS would most likely also need to disagree with these policy findings by the ExA.
- 7.10.6. It should be noted that these conclusions are applicable within the jurisdiction of the UK to decision-making within the HRA framework. The following Chapter 8 sets out equivalent evidence and reasoning in relation to Natura 2000 sites that are outside the UK, where the Habitats and Birds Directives are applicable, but where the domestic regulatory system of HRA does not apply. It should also be noted that the HRA conclusions in this report may require consideration alongside equivalent HRA conclusions in other OWF draft Orders currently in decision to ensure consistency of approach.

## 8. FINDINGS AND CONCLUSIONS IN RELATION TO NATURA 2000 SITES IN OTHER EEA STATES

### 8.1. INTRODUCTION

- 8.1.1. The Applicant considered potential impacts on Natura 2000 sites in other European Economic Area (EEA) States [[APP-031](#)] [[REP2-018](#)] [[REP2-019](#)]. The assessment of impacts in other EEA States is required in accordance with the EIA Regulations and advice contained within the Inspectorate's Advice Note Twelve (AN12): Transboundary Impacts and Process<sup>190</sup>.
- 8.1.2. The EIA transboundary screening process is undertaken by the Inspectorate on behalf of the SoS and is set out in [[OD-001](#)]. It followed a 2-stage process whereby the potential for likely significant effects was considered after the adoption of the SoS' Scoping Opinion, and subsequently after the application was accepted for Examination. After the initial stage, the EEA states listed below were notified of their ability to participate, and at the second stage, the same states were re-notified and consulted in accordance with the EIA Regulations<sup>191</sup>.
- Belgium;
  - Denmark;
  - France;
  - Germany; and
  - The Netherlands.
- 8.1.3. The responses received from the EEA states to the notification and consultation are presented in [[OD-002](#)], [[OD-003](#)], [[OD-004](#)] and [[OD-005](#)] (initial stage) and [[OD-009](#)], [[OD-010](#)] and [[OD-011](#)] (second stage).
- 8.1.4. The ExA is aware that the EIA transboundary process is ongoing and is not contingent upon the Examination process. The duties of the SoS in relation to the EIA transboundary procedure are separate and distinct from the DCO examination process, as acknowledged in the Inspectorate's Advice Note 12.
- 8.1.5. The ExA has also had regard to the '*Guidelines on the Assessment of Transboundary Impacts of Energy Developments on Natura 2000 Sites*

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<sup>190</sup> Planning Inspectorate [Advice Note Twelve](#) (AN12)

<sup>191</sup> The first transboundary screening dated 7 July 2017 was completed under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. On 16 May 2017 the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) came into force. The Applicant opted to prepare its ES in accordance with the requirements of the 2017 EIA Regulations, and therefore Regulation 32 of these Regulations was applicable for the purposes of the SoS' second transboundary screening process.

*Outside the UK*, published by DECC (now BEIS) in 2015<sup>192</sup>. This document sets out the SoS' guidelines on how they intend to take into account the impact of energy developments on Natura 2000 sites outside of the UK.

- 8.1.6. The Applicant cites the DECC guidance in their RIAA (section 2.2 of [REP2-018] [REP2-019]) and there is evidence relating to consultation with representatives in other EEA states in section 4 of the RIAA (in particular, with the French authorities).
- 8.1.7. The ExA notes that, in accordance with this guidance, the SoS will consider information regarding impacts on Natura 2000 sites in other EEA States provided by the Applicant and IPs during the DCO Examination process and undertake an assessment of those impacts.
- 8.1.8. The ExA's findings in relation to the examination of these issues is presented in the following sections to this Chapter.

## **8.2. THE APPLICANT'S ASSESSMENT**

- 8.2.1. The Applicant's assessment of matters relevant to HRA is detailed in section 7.4 of this Report. This includes the Applicant's consideration of potential pathways of LSE from the Proposed Development, to Natura 2000 sites outside of the UK.
- 8.2.2. Table 7.1 of [APP-031] explains the screening criteria applied for the initial identification of SACs, SPAs and Ramsar sites. [APP-031] is the Applicant's HRA Screening Report, which formed part of their suite of Preliminary Environmental Information documentation published in November 2017.
- 8.2.3. Applying these criteria, the Applicant concluded in the HRA Screening Report that LSE could not be excluded for a total of 24 Natura 2000 sites outside of the UK. The relevant sites identified and considered are named and depicted in tables 7.5 – 7.11 and figures 7.6 – 7.11 of [APP-031].
- 8.2.4. At section 8 of [APP-031], the report notes that the determination of LSE was relevant to a November 2017 environmental baseline and project description. In response to this, the report acknowledges that *'additional information will come forward prior to the completion of the RIAA and, if relevant, the sites and features included here for LSE may be amended based on such evidence'*.
- 8.2.5. The Applicant's RIAA [REP2-018] [REP2-019] therefore presents a summary of the potential LSE (including Natura 2000 sites outside of the UK). Paragraphs 7.5.15 – 7.5.21 (marine mammals) and 7.5.38 –

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<sup>192</sup> [Guidelines on the Assessment of Transboundary Impacts of Energy Developments on Natura 2000 Sites Outside the UK](#), Department of Energy and Climate Change (DECC, now BEIS) 2015

7.5.56 (offshore ornithology) of the RIAA set out the potential impacts of the Proposed Development on non-UK Natura 2000 sites considered, which is limited to pathways of effect on these two receptor groups.

8.2.6. Section 13 of the RIAA [REP2-018] [REP2-019] includes a transboundary statement describing the Natura 2000 sites outside of the UK<sup>193</sup>; and relevant features for which a LSE was concluded. The sites and features are:

- France
  - Bancs des Flandres SCI (harbour porpoise, harbour seal and grey seal);
  - Baie de Canche et couloir des trois estuaires (harbour seal and grey seal);
  - Estuaires et littoral picards (baies de Somme et d'Authie) (harbour seal and grey seal);
  - Recifs Gris-Nez Blanc-Nez (harbour seal and grey seal);
  - Ridens et dunes hydrauliques du détroit du Pas-de-Calais (harbour seal and grey seal);
- The Netherlands:
  - Voordelta (harbour seal and grey seal);
- Belgium:
  - Vlaamse Banken (harbour seal and grey seal);
  - SBZ1, SBZ2 and SBZ3 (three separate European sites) (grey seal); and
  - Vlakte van de Raan (harbour seal and grey seal).

8.2.7. The Applicant concludes that no AEOI exists for Natura 2000 sites outside of the UK alone or in-combination [REP2-018] [REP2-019].

### **8.3. EIA TRANSBOUNDARY CONSULTATION**

8.3.1. A response to the EIA transboundary consultation was received from a number of EEA states including France, Netherlands and Denmark. The Government of France was the only state to provide a substantive response [OD-009]. This is discussed further in the following sections of this Chapter. Responses were also received from the Netherlands, who did not have any comments to make but expressed a wish to be kept informed 'on future developments' [OD-011], and Denmark, who expressly stated they did not wish to participate in the process [OD-010]. No formal response was received from Belgium or Germany to the SoS consultation letter of August 2018<sup>194</sup>.

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<sup>193</sup> It is noted that the Applicant does not consistently specify the formal designation of the identified Natura 2000 sites in the RIAA.

<sup>194</sup> The ExA notes that Belgium did respond to the original transboundary notification from the SoS after the adoption of the SoS' Scoping Opinion (sent in July 2017) [OD-005].

8.3.2. No further correspondence from any EEA state was received by the Inspectorate under the EIA transboundary process.

## **8.4. THE EXAMINATION**

8.4.1. On the basis of their responses to the EIA transboundary consultation, the ExA made a procedural decision to invite representatives of both France and Netherlands to attend the Preliminary Meeting and Issue Specific Hearing 1 (ISH1) (International Issues) [[PD-007](#)].

8.4.2. The ExA's IAPI (Annex B of [[PD-006](#)]) included an item on biodiversity, ecology and natural environment effects outside of the UK and, as such, agenda item 4 was included within ISH1 (Annex G of [[PD-006](#)]) covering: '*Biodiversity Effects and Matters Relevant to Habitats Regulations Assessment (HRA) Arising from Other countries*'. The purpose of the agenda item was to allow examination of relevant EIA and HRA matters to Natura 2000 sites outside of the UK and to provide an opportunity for (amongst others) the Government of France to be heard on these matters.

8.4.3. No response was received from the Netherlands in response to [[PD-007](#)] during the course of the Examination.

8.4.4. The Government of France<sup>195</sup> responded to the Rule 6 letter 'to emphasize the main species at stakes for which Natura 2000 sites in France have been designated, which can be impacted by the TEOWF project' [[AS-006](#)]. These sites are as follows<sup>196</sup>:

- Caps Gris Nez SPA (FR3110085);
- Banc des Flandres SPA (FR3112006);
- Littoral seineo-marin SPA (FR2310045);
- Estuaire de la Canche SPA (FR3110038);
- Estuaire de la Canche SCI (FR3100480);
- Banc des Flandres SCI (FR3102002);
- Récifs Gris Nez Blanc Nez SCI (FR3102003);
- Ridens et dunes hydrauliques SCI (FR3102004); and
- Estuaires et littoral picards: baie de Somme et d'Authie SCI (FR2200346).

8.4.5. Similarly, the Government of France made further submissions at Deadline 1 of the Examination in the form of a WR [[REP1-094](#)], where they re-iterated the list of sites above. Whilst their submission also acknowledged that the ExA had extended an invitation to the French Government to attend ISH1 [[PD-007](#)], [[REP1-094](#)] explained that '*Unable to assist to this meeting, the transmission of the following technical*

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<sup>195</sup> The ExA's [[PD-007](#)] was sent to contacts at the Minister de la Transition Ecologique et Solidaire (who responded to the SoS' consultation under EIA Regulation 32), but the term 'Government of France' is used in this Report to relate to any relevant department or agency with the Government of France.

<sup>196</sup> The Government of France [[AS-006](#)] identifies five sites being designated as SCIs. The ExA is satisfied that these are the same Natura 2000 sites as identified by the Applicant in section 13 of [[REP2-018](#)] [[REP2-019](#)].

*document has for objective to bring to your knowledge the details of the analysis conducted', and the ExA understands that this submission was essentially in lieu of attending ISH1.*

- 8.4.6. No further submissions were received from the Government of France prior to the closure of the Examination.
- 8.4.7. The Applicant responded to the Action Points raised by the ExA in relation to matters of Natura 2000 sites outside of the UK [EV-002] at Deadline 1 (Appendix 27 to the Applicant's Deadline 1 submission [REP1-078]). Section 5.1 of the Applicant's Responses to WR [REP2-013] expressed the view of the Applicant that the views/ concerns of the Government of France in [AS-006] are essentially repeated in [REP1-094] and that therefore, their response at [REP1-078] remains applicable to both submissions.

## **MATTERS RAISED BY THE GOVERNMENT OF FRANCE**

- 8.4.8. The matters raised in relation to Natura 2000 sites by the Government of France can be broadly split into three categories, as per the content of the technical documents presented at [AS-006] and [REP1-094]:
- **Ornithology:** Collision risk, loss of habitat and barrier effects to SPAs (and their qualifying features) within France (including in-combination effects);
  - **Marine mammals:** In-combination effects to French SCIs in terms of acoustic disturbance effects to mobile marine mammal species (and the relevant distance thresholds considered by the Applicant); and
  - **Marine Strategy Framework Directive (MSFD):** Potential effects of the Proposed Development and compatibility with the environmental objectives of the 2018-2024 French MSFD plan.
- 8.4.9. The Applicant submitted an updated RIAA at Deadline 2 to the Examination [REP2-018] [REP2-019], superseding the previous version of the RIAA [APP-031] [APP-032] [APP-033]. One of the stated purposes of the updated RIAA was to take into account comments received during the examination up to Deadline 2, including the French Government response to the Rule 6 letter (paragraphs 1.3.3 and 4.1.1 of [REP2-018] [REP2-019]). References to the RIAA in this Chapter of the Recommendation Report are to the revised version of the RIAA.

### **Ornithology**

- 8.4.10. As described in section 8.2 above, the Applicant screened out the potential for LSE on ornithological interest features at Natura 2000 sites outside of the UK.
- 8.4.11. The Government of France in [AS-006] and [REP1-094] assert that the conclusions of the Applicant represent '*a very light analysis, with few arguments and that the conclusions are very hasty*' [sic]. In particular, it was concerned as follows:

- **Caps Gris Nez SPA and Banc des Flandres SPA:** Collision risk, barrier effect and the loss of habitat on:
  - black-legged kittiwake, northern gannet, herring gull, great and lesser black-backed gulls (due to breeding and foraging ranges within the TEOWF area)
  - common murre, razorbill and red-throated loon (migrating and overwintering species crossing the TEOWF area).
  - northern fulmar, common and sandwich tern, brent goose and "skuas group" (unspecified around breeding, foraging or migrating)
- **Littoral Seine-marine SPA and Estuaire de la Canche SPA:** In-combination effects on migratory and wintering birds: northern gannet, alcids, great skua and loons.

8.4.12. The views of the Government of France were broadly that the Applicant had not provided a sufficiently in-depth study demonstrating (with reference to the above-mentioned species and associated Natura 2000 sites) their presence within and/ or the extent to which they may use the TEOWF area. In its view, the Applicant should have considered the need to implement '*environmental measures to limit the impacts, before affirming that there is no likely effect*', including '*risk reduction measures*' such as rotor clamping [[AS-006](#)].

8.4.13. The Government of France also cite difficulties in any assessment of bird migration patterns in a general sense, due to knowledge gaps in feeding areas exploited and technical difficulties in observation, survey and monitoring techniques.

8.4.14. The Applicant responded to these points at Deadline 1 (section 2.5 of Appendix 27 to the Applicant's Deadline 1 submission [[REP1-078](#)]).

8.4.15. The Applicant referred to a list of birds occurring in very small numbers or very infrequently in the TEOWF being considered further in Section 5.2 of the Offshore Ornithology Baseline Technical Report [[APP-077](#)]. As part of the HRA screening process for consideration of LSE, if a species occurred in very small numbers or very infrequently, then the Applicant considered potential impacts at the HRA level would be no more than negligible and could be screened out.

8.4.16. The Applicant clarified the screening criteria applied to consideration of European or Natura 2000 sites with bird interest features (Section 7.2 and Table 7.1 of the RIAA [[APP-031](#)] (superseded by [[REP2-018](#)] [[REP2-019](#)])). These criteria formed the basis of the four French SPAs being screened as having no LSE from the Proposed Development.

8.4.17. The Applicant separately considered the points raised by the Government of France in relation to their Natura 2000 sites in paragraphs 61-78 of [[REP1-078](#)].

### **Cap Gris Nez SPA**

8.4.18. The Cap Gris Nez SPA was screened out on the basis of the information provided in paragraphs 7.5.38 – 7.5.43 of [[REP2-018](#)] [[REP2-019](#)]. In

particular, the Applicant notes that the site is not classified for breeding interest features.

- 8.4.19. Collision mortality rates for the Proposed Development are predicted as being between 1-2 kittiwakes and 3-4 herring gulls, which is considered '*insignificant at an EIA level*'. The location of the Proposed Development is also towards the outer reach of the mean max foraging range for both species and baseline surveys recorded low abundance of kittiwake and herring gull (paragraph 62 [[REP1-078](#)]).
- 8.4.20. The Applicant contends that the estimated impact for all seabirds is very low during their respective breeding periods, '...so any birds from sites at the edge of their mean max foraging range during the breeding period would be considered at very low risk' (paragraph 73 of [[REP1-078](#)]). The Applicant argues that '[a]s a proportion of the minor number of gannets estimated to be subject to mortality during the spring (9-10 individuals) or autumn (4-5 individuals) migration periods it is not likely that the presence of Thanet Extension would have a significant effect on the colonies within French waters' (paragraph 74 of [[REP1-078](#)]).
- 8.4.21. In terms of red-throated diver, gannet, guillemot and razorbill, the Applicant's assessment of disturbance and displacement for all four species both in the ES [[APP-045](#)] and the RIAA [[REP2-018](#)] [[REP2-019](#)], was that LSE are predicted in relation to any seabirds from designated sites, for all four species both in the ES [[APP-045](#)] [[APP-077](#)] and the RIAA [[REP2-018](#)] [[REP2-019](#)], and that these conclusions apply equally to the French sites.
- 8.4.22. Other species referred to in [[AS-006](#)] (fulmar, common tern, sandwich tern, brent goose and skuas) are stated as being important components of the French Natura 2000 sites and which may be subject to collision risk, loss of habitat and barrier effects. The Applicant has determined that as none of these species were found in abundances/ densities that warranted detailed assessment as reported in [[APP-077](#)] and the RIAA [[REP2-018](#)] [[REP2-019](#)], no LSE was predicted for all European sites and Natura 2000 sites considered.
- 8.4.23. In respect of all species considered at the Cap Gris Nez SPA, the Applicant's overarching conclusions is that 'when considering only a small proportion of these low impacts can be connected and apportioned to French SPAs it is logical to screen the French sites out' (paragraph 56 of [[REP1-078](#)]).

#### ***Banc de Flandres SPA***

- 8.4.24. The Banc de Flandres SPA was screened out on the basis of the information provided in paragraphs 7.5.44 – 7.5.47 of [[REP2-018](#)] [[REP2-019](#)].
- 8.4.25. The French Government [[AS-006](#)] identified lesser black-backed gulls, great black-backed gulls, herring gull, kittiwake and Mediterranean gull at this SPA as being potentially affected. The Applicant states that the Proposed Development is towards the outer reaches of the mean max



foraging range for three out of four species, with only lesser black-backed gull being 'well within mean max foraging range' [REP1-078].

- 8.4.26. The Applicant is of the view that [APP-045], [APP-077], [REP2-018] and [REP2-019] demonstrate very low abundances during their respective breeding periods, and that the estimated collision mortality rates for the Proposed Development during the breeding season are less than 4 individuals per year for each of these species and that these are 'insignificant at an EIA level'. The Applicant also cites difficulty in further addressing the concerns of the Government of France in the absence of any defined conservation objectives for the site being drawn to their attention [REP1-078] [AS-006]. No defined conservation objectives for the site were evident in the Government of France's submissions to the Examination.

### ***Estuaire de la Canche SPA and Littoral Seine-marin SPA***

- 8.4.27. Both the Cap Gris Nez SPA and Bancs des Flandres SPA are closer to the Proposed Development and include the same offshore ornithological interest features as the Estuaire de la Canche SPA. The Applicant's rationale is that by logic of the greater distance to the Proposed Development, this site is also considered to be screened out (paragraph 7.5.50 of [REP2-018] [REP2-019]).
- 8.4.28. The Littoral Seine-marin SPA is further still from the Proposed Development and foraging ranges and migratory pathways are such that the Applicant has screened these out as having no LSE.
- 8.4.29. The Applicant concludes that the 'very low' impact of the Proposed Development alone (particularly in respect of collision risks) supports a finding that there would be a 'non-material contribution to any cumulative / in-combination assessment' (paragraph 78 of [REP1-078]) on Natura 2000 site features outside of the UK.
- 8.4.30. The Applicant also points to limitations regarding "access to relevant information on collision risk or other potential impacts predicted from French OWFs" and that accordingly "these developments were not considered further in a cumulative/in-combination assessment" [REP1-078].

### **Marine Mammals**

- 8.4.31. The points raised by the Government of France are discussed under the following subheadings:

#### ***26km Harbour Porpoise Screening Distance***

- 8.4.32. The Applicant emphasises that all of the aforementioned sites were screened in for consideration for grey seal and harbour seal, so those sites have been given due consideration in their view as part of the RIAA (paragraphs 16-20 of [REP1-078] and 7.5.11 – 7.5.21 and table 7.3 of [REP2-018] [REP2-019]).

- 8.4.33. The Government of France was concerned by the finding of no LSE for harbour porpoise as a qualifying feature of the Banc des Flandres SCI and the Gris Nez, Nez Blanc Nez and Ridens et dunes hydrauliques SCI's. The concerns were particularly prevalent in relation to potential for in-combination effect with other French wind projects including Courseulles-sur-Mer, Fécamp and Dieppe Le Tréport (paragraph II - 2.3 of [AS-006]).
- 8.4.34. The Applicant has adopted a 26km screening threshold for harbour porpoise which is described in section 7.3.3 of [REP2-018] [REP2-019] and is reaffirmed in paragraphs 17-19 of [REP1-078]. The Applicant argues that this approach is in line with JNCC advice and the guidance set out in the conservation objectives for the Southern North Sea SAC<sup>197</sup>. The Applicant maintains that the impact pathway from piling activity located beyond 26km need not be included within the assessment for harbour porpoise and that the screening distance has been agreed with NE during the Evidence Plan Process (item HRA 014 of [APP-140]). With the exception of the Banc des Flandres, the other sites raised by the Government of France lie outside of this range and therefore have not been screened in for effects on harbour porpoise.
- 8.4.35. The Applicant also cites the fact that:
- There are no formal conservation objectives for the three additional harbour porpoise SCIs referenced by the French authorities; and
  - There is no published, credible alternative methodology for the assessment of effects on harbour porpoise (and attempts have been made through enquiries with French colleagues to establish any such methodology).

**Additional baseline data**

- 8.4.36. [OD-009] and [AS-006] present a view from the Government of France that there have been shifts in harbour porpoise distribution within the North Sea to the south *'probably causes are: ...and the installation of offshore wind farms without preliminary studies and without particular precautions carried out on the cetaceans'*.
- 8.4.37. The Applicant agrees that a shift in harbour porpoise distribution from the northwest North Sea to the south has occurred since SCANS I (1994) (as demonstrated in cited literature in paragraph 22 of [REP1-078]). The Applicant explains that the highest densities of harbour porpoise are found in the southwestern North Sea, and north and east of Denmark, and that the majority of offshore wind farms constructed to date (and since 1994) in the North Sea have been along the east coast of the UK and the coastlines of Belgium, Netherlands, Germany and Denmark.
- 8.4.38. The Applicant therefore refutes the position of the Government of France in that the location of offshore wind farms does not appear, in their view, to correlate to the assertion that construction at these locations has resulted in the shift in harbour porpoise distribution. This is because the

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<sup>197</sup> [http://archive.jncc.gov.uk/pdf/SNorthSea\\_ConsAdvice.pdf](http://archive.jncc.gov.uk/pdf/SNorthSea_ConsAdvice.pdf)

locations of offshore wind farm construction and the location of harbour porpoise (since 1994) appear similar.

***In-combination effects***

- 8.4.39. As described above, the Government of France made representations in respect of the adequacy of the in-combination assessment relating to the other French wind projects identified, including Courseulles-sur-Mer, Fécamp and Dieppe Le Tréport (paragraph II - 2.3 of [AS-006]).
- 8.4.40. The Applicant responded to clarify that all three projects were considered according to the relevant criteria applied (tables 8.2 and 12.2 of [REP2-018] [REP2-019]). Courseulles-sur-Mer was not included due to its range being beyond the maximum screening range of 145km for any of the European sites considered for marine mammals. All three projects lie outside the 26km range for harbour porpoise and have therefore not been considered as part of any in-combination assessment for that species.
- 8.4.41. Following ISH1, the Applicant revisited the project websites for Fécamp and Dieppe Le Tréport and confirmed that no change was required to the existing in-combination assessment within the RIAA, as set out in paragraphs 33 and 34 of [REP1-078]. Tables 4.2 and 8.3 of the RIAA [REP2-018] [REP2-019] reflect that the deadline 2 iteration of the RIAA was updated to take these into account.
- 8.4.42. As set out in paragraph 8.2.6 above, section 13 of the RIAA [REP2-018] [REP2-019] concludes the Applicant cannot rule out LSE in relation to five SCI's in France, largely in relation to harbour seal and grey seal, but also for harbour porpoise at one of the sites. However, the Applicant concludes no AEoI for all of these sites and features.

***Marine Strategy Framework Directive objectives (MSFD)***

- 8.4.43. The Government of France raised concerns that the Proposed Development could potentially affect their ability to comply with the requirements of the MSFD, considering the environmental objectives within the 2018-2024 plan around marine mammals and seabirds (section II – 2.1 and I – 2.3 of [AS-006]).
- 8.4.44. In respect of marine mammals, the Applicant considers that the Marine Mammal Mitigation Protocol (MMMP) is sufficient to reduce the risk of permanent threshold shift (PTS) auditory injury to 'negligible' for all marine mammal species. These conclusions are supported by and evidenced as part of the RIAA [REP2-018] [REP2-019].
- 8.4.45. The Applicant is content that having regard to the location of the Proposed Development which lies towards 'the outer reaches, or outside, of the mean max foraging range (defined by Thaxter et al, 2012) for most seabirds at colonies within the four French SPAs referred to in the French submission' (paragraphs 41-42 of [REP1-078]) significant effects on seabirds in French Natura 2000 sites alone or in-combination would not occur.

## 8.5. EXA CONCLUSIONS

- 8.5.1. Of the EEA States that were notified and consulted, the Government of France was the only state to make substantive submissions under Regulation 32 of the EIA Regulations [[OD-009](#)].
- 8.5.2. The ExA is mindful of the SoS' duties under Regulation 32 of the EIA Regulations and has had regard to the DECC 'Guidelines on the assessment of transboundary impacts of energy developments on Natura 2000 sites outside the UK'<sup>198</sup>.
- 8.5.3. The Applicant's evidence relating to Natura 2000 sites in Belgium, Denmark, Germany, the Netherlands and Sweden<sup>199</sup> was uncontested during the Examination. The ExA has no reason to question the findings and therefore concurs with the Applicant's assessment that significant transboundary effects are unlikely. The ExA recognises that the duties in relation to Regulation 32 are ongoing but is of the view that sufficient information has been provided by the Applicant (unrebutted by the aforementioned states) to support the conclusions reached.
- 8.5.4. The Natura 2000 sites in the Netherlands and Belgium which were identified in section 13 of the RIAA [[REP2-018](#)] [[REP2-019](#)] are relevant to the assessment of impacts on marine mammals. The ExA considers that provisions contained in the DCO and DMLs would mitigate against any significant environmental effects both within and outside of UK waters. In particular, a MMMP is required where driven or part-driven pile foundations are proposed, and the MMMP must be in accordance with the draft MMMP [[APP-146](#)], forming part of the PEMP under conditions 13 and 11 of the generation assets and export cable system DML's respectively [[REP8-013](#)].
- 8.5.5. The Natura 2000 sites in France and which have been the subject of discussion with the Government of France (as set out at paragraph 8.4.4 above) have also been considered. The ExA is of the view that the Applicant has sufficiently demonstrated that significant transboundary effects are not likely. The ExA notes the concerns raised by the Government of France around the cumulative/ in-combination assessments for offshore ornithological features. The ExA also notes the Applicant's submissions that it was unable to access all relevant information on collision risk or other potential impacts predicted from French OWFs [[REP1-078](#)]. However, despite opportunities for oral

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<sup>198</sup> [Guidelines on the Assessment of Transboundary Impacts of Energy Developments on Natura 2000 Sites Outside the UK](#), Department of Energy and Climate Change (DECC, now BEIS) 2015.

<sup>199</sup> Table 7.6 of the HRA Screening [[APP-032](#)] identified the Kosterfjorden-Vaderofjorden SAC in Sweden as supporting mobile species (harbour porpoise) which may interact with potential effects associated with TEOWF. However, the ExA notes this site as being in excess of 950km from the TEOWF (compared to a 26km screening distance for harbour porpoise as set out in table 7.11 of [[APP-032](#)] and in the RIAA [[REP2-018](#)] and [[REP2-019](#)]). On that basis, this Swedish site was not considered further by the Applicant or the ExA.

engagement and for WRs to be provided, no such data was presented by the Government of France during the course of the Examination.

- 8.5.6. In circumstances where the Government of France was provided with multiple opportunities to advance evidence to refute the Applicant's position but did not do so, the ExA considers that the evidence presented by the Applicant represents the best available scientific information. The ExA has also had regard to the relatively low levels of collision mortality and disturbance and displacement effects predicted from the Proposed Development. On that basis, the ExA is persuaded that the Proposed Development's contribution is likely to be a non-material contribution to any cumulative/ in-combination assessment in terms of SPAs in France. The ExA agrees that it is appropriate for a small proportion of the '*low impacts*' predicted to be apportioned to French Natura 2000 sites but considers it reasonable to conclude there would be no likely significant effects to any of the Natura 2000 sites identified on that basis. The ExA is also content that the Applicant's approach to the screening of ornithological effects on Natura 2000 sites in France (using the same criteria as for UK sites) is sufficiently robust.
- 8.5.7. The ExA is content that impacts to marine mammals and associated concerns of the Government of France are as per those set out above for sites in Belgium and the Netherlands. The provisions of the DCO and DMLs would mitigate against any significant environmental effects on these sites.
- 8.5.8. Finally, the ExA notes the concerns raised by the Government of France in respect of marine mammals and offshore ornithology about the effect of the Proposed Development on its ability to comply with the requirements of the MSFD (through environmental objectives within the 2018-2024 plan). On the basis of the available evidence, the ExA is content that in circumstances where it has found no LSE on any Natura 2000 sites outside the UK, there is equally no evidenced basis that the Proposed Development would cause non-compliance with the MSFD outside the UK.
- The ExA has considered whether there are any AEoI in respect of Natura 2000 sites outside the jurisdiction of the UK and on the basis of available evidence concludes that there are none. However, the SoS should note that there is an enduring duty to consider responses from State parties outside the UK.

# 9. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

## 9.1. INTRODUCTION

9.1.1. The designated NPSs EN-1 (Overarching Energy) and EN-3 (Renewable Energy) provide the primary basis for making decisions on development consent applications for renewable energy OWF NSIPs in England by the Secretary of State (SoS). The ExA's conclusions on the case for development consent in respect of the application have therefore been reached in large part within the context of the policies contained in these NPSs. Regard has been had to the MPS and to important and relevant considerations arising from other NPSs (NPS EN-5 in relation to effects on transmission infrastructure and NPSP in relation to shipping and ports). However, in reaching the conclusions set out in this Chapter, the ExA has taken all other relevant law and policy into account.

## 9.2. THE MAIN ISSUES

9.2.1. The ExA's conclusions on the effects of the Proposed Development and its performance against relevant policy and legislation are summarised below, drawing on the analysis of planning considerations set out in detail in Chapters 4, 5, 6, 7 and 8 above.

9.2.2. The main issues in the Examination were as follows:

### *Primary issues (Chapter 5)*

- Section 5.2: Maritime navigation, shipping and ports;
- Section 5.3: Biodiversity, ecology and the natural environment;
- Section 5.4: Townscape, seascape, landscape and visual effects;
- Section 5.5: Historic environment;
- Section 5.6: Construction;
- Section 5.7: Noise & other public health effects;
- Section 5.8: Marine and coastal physical processes;
- Section 5.9: Water environment;
- Section 5.10: Air navigation, aviation and airports; and
- Section 5.11: Electric & magnetic fields.

### *Consequential issues (Chapter 6)*

- Section 6.1: Introduction;
- Section 6.2: Fishing & fisheries;
- Section 6.3: Effects on other infrastructure;
- Section 6.4: Socio-economic effects; and
- Section 6.5: Other effects.

### *Habitats and Birds Directives (HRA and International) Issues (Chapters 7 and 8)*

The primary findings in relation to those issues were as follows.

- The main issue emerges from substantial unresolved concerns about adverse effects to shipping and navigation - in summary, that risks to

safety of navigation, increased as a result of encroachment on sea space for general navigation and pilot transfer operations, have not been demonstrated to have been reduced to ALARP, which is a significant and weighty NPS policy non-compliance (see Section 5.2 above and paragraphs 9.3.3 and 9.3.7 below).

- This increased navigational risk has consequential adverse effects on ports and port operations that are a significant and weighty NPS Ports non-compliance (see Section 5.2 above and paragraphs 9.3.11 and 9.3.12 below); and
- The Examination also identified a broad range of effects from the Proposed Development relevant to most main issues that were beneficial, neutral, or if the effects were adverse they were capable of appropriate mitigation.

Full consideration has been given to LIRs provided by KCC, DDC and TDC (the host authorities).

- Concerns by KCC about effects on its public open space at Pegwell Bay Country Park are noted, but these are considered to be mitigable.
- The absence of any other major concerns in principle from the host local authorities DDC and TDC has been noted and taken into account.

### **9.3. STATUTORY CONCLUSIONS ON POLICY**

9.3.1. NPS EN-1 and EN-3 policies that are relevant to OWF development (the designated Energy NPSs) provide the basis for the operation of the presumption in favour of policy-compliant development found in PA2008 s104(3). Where that section refers to '*any relevant national policy statement*', reference must be made back to s104(2)(a) which is clear that the SoS must have regard to '*any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement")*'. In using the term 'relevant Energy NPS policy', the ExA is referring to those policies from NPS EN-1 and EN-3 which have effect and are relevant to OWF development, directly engaged by virtue of s104(2)(a) and (3). These are the policies that the SoS must decide the Applicant in accordance with.

9.3.2. Other NPSs (NPS EN-5 and NPSP) give rise to important and relevant considerations for the SoS but are not directly subject to the policy presumption in s104(3). The SoS must also have regard to the MPS (s104(2)(aa)), but the presumption in favour under s104(3) does not apply. These NPSs and the MPS are matters for the planning balance.

9.3.3. There are three broad circumstances relevant to the application as examined in which the SoS can be recommended to withhold development consent and those in summary are:

- under s104(3), where the Proposed Development does not comply with relevant designated Energy NPS policy (referred to below as direct non-compliance); and/ or
- arising from s104(4) to (6) and (8), where one of the statutory exceptions to the presumption in PA2008 s104(3) applies, where an

external provision or policy must be considered (referred to below as the statutory exceptions); and/ or

- under s104(7) where the planning balance indicates overall *'that the adverse impact of the Proposed Development would outweigh its benefits'* (referred to below as the planning balance).

Further careful consideration is required to be given to all three circumstances.

### **Direct non-compliance**

- 9.3.4. Direct non-compliance with a relevant Energy NPS policy from EN-1 or EN-3 does not necessarily indicate to the SoS that development consent should not be granted, for two reasons:
- the policy may not be relevant to OWF development; or
  - on its plain English meaning, whilst relevant, the policy may give rise to what is in any case a balanceable consideration, even in instances of non-compliance.
- 9.3.5. Not all of the individual statements of policy in NPS EN-1 or EN-3 are relevant to OWF development. To be a matter of direct non-compliance subject to PA2008 s104(3), the policy must be relevant to OWF development and engaged by the facts of the application under consideration.
- 9.3.6. If there is an instance of direct non-compliance with a relevant policy, individual policies must be given their plain English meaning and read with care, to ensure that the performance of the Proposed Development is properly evaluated against them.
- 9.3.7. There are certain relevant Energy NPS policies that should be considered but can be balanced, even when there is direct non-compliance. These are policies which expressly set out desirable performance or standards that should normally be met by an application, matters that need to be considered in the round, reviewing the overall performance of the Proposed Development against relevant designated NPS policy as a whole.
- 9.3.8. A widely referred-to example relevant to OWF development relates to visual impact policy in NPS EN-1 paragraph 5.9.18, which makes clear that *'[a]ll proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The [SoS] will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project.'* In framing that process, NPS EN-1 paragraph 5.9.21 highlights that it is of the nature of most energy technology that certain visual impacts may not be mitigable without a material loss in the capacity or efficiency of the installation, which must also be taken into account. In short: a non-compliance against NPS EN-1 section 5.9 visual impact policy is a matter that is placed into the planning balance. Adverse visual effects are considered within the context set by the energy generation benefits of the development and the technical feasibility, cost and effectiveness of any mitigation.



- 9.3.9. Where there is direct non-compliance with a balanceable policy, less than optimally compliant performance by the Proposed Development needs to be internally balanced. That balance needs to take account of the mitigation used to ensure the best reasonably achievable performance and the balance to be struck between performance on this particular issue and on other (potentially competing) issues that may be of more import to the final decision. Individual non-compliance does not indicate that the only decision that can be taken in accordance with the relevant national policy statement is to withhold development consent.
- 9.3.10. Returning to the example of NPS EN-1 section 5.9, to decide an application providing a significantly adverse visual impact and poor performance against this policy alone would not trigger circumstances in which development consent should then be withheld to meet PA2008 s104(3), although that poor performance should be evaluated in the wider planning balance under s104(7).
- 9.3.11. All such balancing policies of the type identified in paragraphs 9.3.7 to 10 above are addressed in the individual subject matter sections of this Report. Conclusions are drawn on them in Section 9.4 below (the Planning Balance).
- 9.3.12. However, there are relevant energy NPS policies that individually set out tests to be met by the Proposed Development, where direct non-compliance after the application of mitigation does indicate that a decision to grant development consent would not be a decision in accordance with a relevant National Policy Statement. In such instances, if an individual policy is not complied with, the effect of the combination of the drafting of the policy and of PA2008 s104(3) is that development consent for the Proposed Development should be withheld.
- 9.3.13. The nature of relevant energy NPS policies and whether they give rise to specific tests to be met is also set out in detailed terms in individual sections of this Report from Chapter 5 to 8.
- 9.3.14. It should be noted that in this Examination there were substantial submissions from IPs and OPs that:

- the Proposed Development does not comply with relevant designated NPS policy, in broad terms because of its insufficiently assessed and/or insufficiently mitigated adverse impacts on ports, shipping and navigation matters (s104(3)) (direct non-compliance).

However, these submissions were typically integrated with or presented alongside submissions that:

- the Proposed Development could breach international obligations in relation to the law of the sea due to the infringement of international sea lanes, for the same broad reasons (s104(4))(a statutory exception); and/ or
- the adverse impact of the Proposed Development would outweigh its benefits, for the same broad reasons but also taking into account its adverse effects on existing and prospective Ports NSIP use and

development in the Thames estuary, running counter to the need case and policy objectives of NPSP (s104(7)) (the planning balance).

- 9.3.15. The effect of the Proposed Development on ports, shipping and navigation matters is set out in full in Section 5.2 of this Report, where all relevant findings are located, and issues are addressed together. The purpose of the remainder of this section is to frame the applicable statutory and policy tests that the SoS will need to apply to evaluate those submissions bearing on direct policy compliance, where the drafting of policies indicates against the grant of development consent to non-compliant development for the purposes of PA2008 s104(3) (direct non-compliance), s104(4 – 6 and 8)(any statutory exceptions) and in s104 (7) (the planning balance).
- 9.3.16. The matters of alleged direct NPS non-compliance are addressed in the following paragraphs 9.3.17 - 27.
- 9.3.17. It was alleged that the Proposed Development both as applied for and as amended in the material change process has not demonstrated that it has reduced risk to safety of maritime navigation (increased as a negative impact of the Proposed Development) to As Low As Reasonably Practicable (ALARP).
- 9.3.18. NPS EN-3 paragraph 2.6.162 provides that 'The [SoS] should be satisfied that the site selection has been made with a view to avoiding or minimising disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade. Where a proposed development is likely to affect major commercial navigation routes, for instance by causing appreciably longer transit times, the IPC should give these adverse effects substantial weight in its decision making...'.<sup>200</sup> It was alleged in relation to the impact of Proposed Development on approaches to the Thames ports that both disruption and/ or economic loss had not been minimised. There were several discussions with the Applicant, IPs and OPs about the tier significance of strategic route (regional, national or international) at which this test might be engaged. It was alleged that:
- the approaches to port facilities are negatively impacted by the Proposed Development; and/or
  - the routes that flank the Proposed Development are strategic routes essential to regional, national and international trade; and/or
  - the routes are major commercial navigation routes; and/or
  - about an hour's additional transit time would be occasioned by mariner's decisions to divert around the Proposed Development due to concerns about safety of navigation between the Proposed Development and the Kent coast.
- 9.3.19. Again in relation to issues around tiered significance, were the SoS to form the view that the approaches to the Thames estuary and

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<sup>200</sup> The emphasis by the ExA of cited policy text (shown in italics) is underlined.

particularly what came to be referred to extensively as the 'inshore route' (a passage for shipping to access and egress the Thames estuary, passing between the existing Thanet OWF and the Kent coast), was less strategically important, NPS EN-3 paragraph 2.6.163 nevertheless provides that '*[w]here a proposed offshore wind farm is likely to affect less strategically important shipping routes, a pragmatic approach should be employed by the [SoS]. For example, vessels usually tend to transit point to point routes between ports (regional, national and international). Many of these routes are important to the shipping and ports industry as is their contribution to the UK economy. In such circumstances the [SoS] should expect the applicant to minimise negative impacts to as low as reasonably practicable (ALARP)*'<sup>201</sup>. Whilst submissions were made that the effects were on more strategically important routes (considered in detail in section 5.2 of this Report), the ExA agrees that this test and the achievement of a reduction of risk to safety of navigation to ALARP is the objective to be met by the Proposed Development.

9.3.20. NPS EN-3 paragraph 2.6.165 states that '*[t]he [SoS] should not consent applications which pose unacceptable risks to navigational safety after all possible mitigation measures have been considered.*'<sup>202</sup> In this context, there have been extensive submissions from statutory and industry maritime parties that risk reduction to ALARP has not been demonstrated, either by the development as applied for or following the material change application that introduced the SEZ as additional mitigation. In combination with paragraph 2.6.163, the ExA also considers that this means that if formal safety assessment and expert stakeholder engagement has not demonstrated to the satisfaction of MCA as regulatory authority that all possible mitigation (including the SEZ) does not reduce risk to ALARP, the application still poses unacceptable risks to navigational safety. Turning to the question of whether development consent should be withheld, the ExA is clear that the plain English meaning of this policy is that, unless the SoS can conclude that the application has introduced sufficient mitigation of risks to safety of navigation to make them acceptable, development consent should be withheld.

9.3.21. NPS EN-3 paragraph 2.6.168 provides that '*[t]he [SoS] should, in determining whether to grant consent for the construction or extension of an offshore wind farm, and what requirements to include in such a consent, have regard to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the development.*'<sup>203</sup> There were extensive submissions about whether the shipping routes prospectively affected by the Proposed Development amounted to sea lanes and these are dealt with in Chapter 5.2. However, even taking the view that these routes are not sea lanes, the ExA remains clear that

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<sup>201</sup> The emphasis by the ExA of cited policy text (shown in italics) *is underlined*.

<sup>202</sup> The emphasis by the ExA of cited policy text (shown in italics) *is underlined*.

<sup>203</sup> The emphasis by the ExA of cited policy text (shown in italics) *is underlined*.

policy non-performance in this area engages the question of whether development consent should be granted or withheld.

- 9.3.22. If the SoS concurs with the ExA that, for reasons set out in Chapter 5.2, the site selection has not minimised disruption or economic loss to the shipping sector and to ports important at the regional tier or above (EN-3 2.6.162) and that negative impacts in terms of navigational risk have not been demonstrated to be reduced to ALARP following the application of mitigation (EN-3 2.6.162), then consideration as to whether or not to grant development consent should be given (EN-3 2.6.168).
- 9.3.23. If the effect of not reducing risks to ALARP is to pose unacceptable risks to navigational safety after all possible mitigation measures have been considered, then consent should be withheld (EN-3 2.6.165).
- 9.3.24. Having considered the recommendations and policy tests discussed above, if the SoS were after all minded to grant consent, then further consideration would need to be given as to when the effectiveness of risk mitigation proposed (to achieve a rating of ALARP) could be validated. This should include consideration of timing of the additional evidence required to support such validation for EIA purposes whilst ensuring that the Proposed Development and assessed mitigation proposals remain within the Rochdale envelope. These are considered in detailed terms in section 5.2 at paragraphs 5.2.27, 5.2.41 and 5.2.49, 5.2.71 and 5.2.257.

### **Statutory exceptions**

- 9.3.25. The ExA has considered whether any sea lanes affected by the Proposed Development are designated international 'sea lanes' where the breach of international obligations and PA2008 s 104(4) would be relevant; it concludes in Section 5.2 and specifically at paragraph 5.2.61 that there are no such 'sea lanes' subject to international obligations.
- 9.3.26. The ExA has considered whether any other statutory exceptions under PA2008 s 104(5 – 6) or (8) apply but concludes that none do.

### **The planning balance**

- 9.3.27. The aggregate effects of the Proposed Development in the round, assessed within the applicable policy framework fall to be considered in relation to the planning balance for the purposes of PA2008 s104(7). The full consideration of the planning balance takes place in section 9.4 below. However, the following policy matters identified here are also required to be carried forward into the planning balance.
- NPS compliance;
  - NPS EN-5 compliance; and
  - MPS compliance.

### ***NPS***

- 9.3.28. Paragraphs 4.5.4 –.5 above identify that NPS Ports (NPS) is an important and relevant consideration for the SoS under PA2008

s104(1)(d). Performance under NPSP is therefore a matter addressed in relevant individual sections and under the planning balance.

- 9.3.29. In this respect the SoS should note that there are important and relevant outstanding concerns that the Proposed Development could, as a consequence of the increased risk to safety of navigation to ALARP, have the effect of limiting, diverting or delaying traffic to existing, consented and possible future NPSP-compliant (NSIP) port developments in the Thames estuary area. There are unresolved questions about whether the maritime traffic growth forecasts used to support the application have allowed for growth that is commensurate with the assumptions used to underpin the need case for ports infrastructure in NPSP Chapter 3. These could result in the Proposed Development acting as a constraint against existing, consented and possible future ports NSIP development, reducing their efficiency of operation and the viability of the Thames estuary as a location for such development.
- 9.3.30. In interpreting maritime traffic growth forecasts and balancing the approach taken by the Applicant against that advocated by Ports and Shipping interests, it is important to take into account that NPSP has two relevant objectives. It seeks competition between UK ports to reduce ports and shipping costs, which it identifies as requiring spare port capacity *'to enable real choices for port users'* (paragraph 3.4.13). It also seeks resilience, with spare ports capacity acting as an insurance against economic harm enabling the handling of *'short-term peaks in demand, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties'* (paragraph 3.4.15). As the UK prepares to withdraw from the EU, the retention and development of competitive and resilient major port facilities assume a particular importance and relevance. NPSP competition and resilience objectives (amongst other outcomes) also serve to support the continued development of the OWF generating sector through the availability of construction and service facilities.
- 9.3.31. NPSP identifies (paragraph 3.4.8) that the Thames estuary is the location of the single largest addition to UK container port capacity since 2005 (London Gateway Port). It also identifies the desirability of enabling ports to develop nearest to the major sources of demand for port services (which for large container and ro-ro terminals is the South East (para 3.4.11). However, the policy is not locationally specific. It places no particular weight on the Thames as a port location. But nevertheless, effects on the ability of the UK to meet the need for ports in any economically and physically feasible location for such development bears against the achievement of a positive response to the NPSP assessment that there is *'a compelling need for substantial additional port capacity over the next 20–30 years, to be met by a combination of development already consented and development for which applications have yet to be received'* in all possible locations (para 3.4.16).
- 9.3.32. That paragraph goes on to highlight that *'[e]xcluding [and by inference avoidably reducing to a significant extent] the possibility of providing additional capacity for the movement of goods and commodities through*

new port development would be to accept limits on economic growth and on the price, choice and availability of goods imported into the UK and available to consumers. It would also limit the local and regional economic benefits that new developments might bring. Such an outcome would be strongly against the public interest.'

- 9.3.33. The SoS will need to weigh the effect of the Proposed Development on port competitiveness and resilience and as a possible avoidable reduction or downward pressure on the use and development of existing and potential future NSIP port capacity in the planning balance. These matters are matters for the planning balance however. None bear on the direct application of PA2008 s104(3).

#### ***NPS EN-5***

- 9.3.34. Finally, the ExA has given consideration to NPS EN-5 relating to electricity transmission infrastructure. This is not a source of 'relevant designated Energy NPS policy', as the Proposed Development does not include the development of a transmission alignment as such. The cable alignments included in the Proposed Development are associated development to a generating station development. However, it is prospectively important and relevant, as the Proposed Development is required to connect with the transmission system at Richborough Energy Park, which is the location of a terminal substation on the Richborough Connection, a consented EN-5 NSIP. This is also the location of extensive transmission, international interconnector and distribution system infrastructure. It follows that the ExA considers that relevant policy from NPS EN-5 is important and relevant.

- 9.3.35. The detailed questions raised by this interface are addressed in Chapter 5 and (in relation to CA and TP optionality) Chapter 11 below. Relevant protective provisions have been agreed and transmission and distribution system and interconnector statutory undertaker representations having been withdrawn. On this basis, the ExA can advise the SoS that all relevant policy objectives from NPS EN-5 are met by the Proposed Development and none bear on the direct application of PA2008 s 104 (3).

#### ***Conclusion on NPS Policy***

- 9.3.36. Taking all relevant policies into account, the ExA concludes as follows:
- NPS non-compliance is a matter to be carried forward to the planning balance for the purposes of PA2008 s104(7) and is a weighty negative consideration.
  - NPS EN-5 is complied with. This is a matter to be carried forward to the planning balance for the purposes of PA2008 s104(7) and is a neutral consideration.

#### ***The Marine Policy Statement (MPS)***

- 9.3.37. Paragraph 1.3.2 of the MPS makes clear that NSIP consents including OWF developments are determined in accordance with PA2008 processes. Where a relevant NPS has been designated, such applications

must be decided in accordance with the NPS (subject to exceptions), having regard to the MPS. The MPS must be considered but does not bind or mandate a decision by the SoS.

9.3.38. The general thrust of MPS policy is supportive of the development of offshore renewables and particularly OWFs to provide needed energy and beneficial employment whilst reducing carbon emissions, subject to the provision of appropriate mitigation to address acknowledged likely adverse impacts (see MPS section 3.3). The Proposed Development broadly complies with it.

9.3.39. Alleged non-compliance with the MPS relates to the following<sup>204</sup>:

- MPS paragraph 3.4.7 identifies that '[i]ncreased competition for marine resources may affect the sea space available for the safe navigation of ships. Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety and ensure that their decisions are in compliance with international maritime law. Marine Plan development and individual decisions should also take account of environmental, social and economic effects and be in compliance with international maritime law. Marine plan authorities will also need to take account of the need to protect the efficiency and resilience of continuing port operations, as well as further port development.'

9.3.40. Section 5.2 above records that the Proposed Development does cause negative impacts on shipping activity, freedom of navigation and navigational safety and these will need to be taken into account in the decision. However, these are matters for the planning balance. They do not bear on the direct application of PA2008 s104(3).

9.3.41. The MPS does specifically identify the need for the makers of marine plans to protect the efficiency and resilience of existing ports (paralleling policy in NPSP), but the SoS should note that the drafting here directs this policy to the plan-making decision maker, not to the development consent or marine licensing decision maker. For this reason, the ExA observes that this strictly is not a point of policy non-conformity. However, the same policy point arises from NPSP and appears to be an important and relevant consideration for the SoS in decision making.

### ***Conclusion on MPS Policy***

9.3.42. Taking all relevant content of the MPS into account, the ExA concludes as follows:

- The MPS must be considered by the SoS.
- Particular instances of MPS non-compliance relating to shipping, navigation safety and ports have been identified which must be weighed in the planning balance for the purposes of PA2008 s104(7). These are weighty negative considerations.

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<sup>204</sup> The emphasis by the ExA of cited policy text (*shown in italics*) is underlined.

## **9.4. THE PLANNING BALANCE**

9.4.1. Conclusions are drawn here in relation to the planning balance, relevant to the consideration of PA2008 s104(7).

9.4.2. Policy matters (other than NPS and MPS)

- There are no applicable Marine Plan policies in force.
- The Proposed Development generally conforms with the Development Plans in force on land that relates to its respective onshore parts.
- It benefits from specific Development Plan policy support in terms of its role in providing desirable renewable energy development and employment and this weighs positively in the planning balance.
- Other Development Plan policies relating to the open countryside, heritage, environmental protection, water quality, biodiversity conservation, landscape, archaeology and waste are not fully met, but the relevant authorities agree that adverse effects have been appropriately mitigated. These are neutral considerations.
- No Neighbourhood Plans have been drawn to the attention of the ExA.

9.4.3. EIA considerations

- The Proposed Development is EIA development.
- The EIA process is subject to the 2017 regulations.
- The submitted ES, as augmented by subsequent documents has provided a generally adequate assessment of the environmental effects of the Proposed Development, sufficient to describe the Rochdale Envelope for it and, as referred to within the dDCO, to secure its delivery within that envelope.
- However, a reservation is required for matters relevant to the NRA and NRA Addendum in respect of which it is the case that navigational risk has not been characterised with sufficient certainty and clarity to enable the SoS to reach a decision upon it that is also adequately informed by an understanding of its environmental effects (see paragraph 9.4.6 below).
- It is therefore the case that by the close of Examination there was insufficient environmental information on which the ExA or the SoS could prudently base a requirement or other relevant post-approval procedure to address concerns arising about the characterisation of navigational risk.

9.4.4. HRA considerations (within the UK)

- Likely significant effects (LSE) on the features of a number of designated sites within the UK have been identified, which on assessment, did not give rise to adverse effects on the integrity (AEoI) of those sites.

9.4.5. Natura 2000 considerations (outwith the UK)

- Likely significant effects (LSE) on the features of a number of designated sites in France have been identified, which on assessment



in the light of the available evidence did not give rise to adverse effects on the integrity (AEoI) of those sites.

#### 9.4.6. Maritime navigation, shipping and ports effects

Conclusions on effects on sea room for safe navigation

- Assessment of safe sea space should take greater account of the context provided by expert advice and experience of turning manoeuvres, visibility and geographic constraints in local waters than was provided by the Applicant's document set.
- The evidence of local expert maritime stakeholders suggests that safety for general navigation as well as of vessels manoeuvring to transfer pilots would be jeopardised by the Proposed Development, with weighty adverse effects to a significantly greater extent than were predicted in the Applicant's document set. This reduction would be critical and substantially adverse in the sea area of complex pilotage and general navigation between the proposed SEZ limits and the navigational marks of NE Spit Racon buoy in particular (and also to a lesser extent the sea space between the Proposed Development and Elbow buoy off the North Foreland).
- It remained a matter of dispute between the Applicant and shipping and ports interests as to whether or not there would be significant growth in large vessel traffic around the Proposed Development as a consequence of the need to reduce pressure need to reduce pressure on congested pilot transfer sea space at Sunk PBD. Irrespective of contested views on future marine traffic forecasts (see further marine traffic projections below), large commercial ships of 333m LOA already use the NE Spit PBD to transfer pilots. Their navigational safety would be compromised by the effects of the Proposed Development.

Conclusions on marine traffic growth projections and effects on likelihood of incident occurrence:

- The overall trend figures taken by the Applicant of 10% traffic growth in the region over the operational period of the Proposed Development is likely to understate the relevant traffic growth in specific types of traffic to London ports using the routes close to the existing TOWF<sup>205</sup>.

Conclusions on navigational risk:

- Taking all relevant documents and assessments into account (including the NRA, the incorporation of the proposed SEZ and the NRA Addendum), the Proposed Development has not demonstrated

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<sup>205</sup> NPSP at paragraphs 3.4.3-4 does not set out shipping traffic forecasts, basing its analysis of the demand for port services and port development instead on cargo volumes by type. Whilst it acknowledges a significant downturn in demand during the global financial crisis subsequent to its forecast base dates of 2006 and 2007, it also makes clear that the effects of that downturn were expected to be temporary and that long-term demand for ports services would be likely to perform as per base date forecast. In this context the Applicant's traffic growth forecast appears to be low.

that it can reduce navigational risk in surrounding waters to As Low As Reasonably Practicable (ALARP), as it is required to do in order to be NPS EN-3 compliant and to address relevant statutory advice and guidance.

- The Applicant's NRA identified additional risk controls that might be considered to further mitigate risk to lower down the ALARP scale. The Applicant concluded that such additional controls were not justified, but no substantial cost-effectiveness analysis has been presented to substantiate the Applicant's claim of all major navigational risks being controlled to ALARP.
- In the role of independent observer and statutory authority with the responsibility under MGN543 to advise the decision-maker, the MCA noted at the conclusion of the Examination that even with the introduction of the SEZ and additional risk assessment late in the Examination, the Applicant has failed to reach agreement with stakeholders on navigational risk assessment inputs or outputs.
- Substantial weight needs to be attributed to the qualitative judgement of the MCA, as the statutory authority responsible for marine safety matters: that the Applicant has failed to demonstrate convincingly that the overall risk to safety of navigation due to the effects of the Proposed Development has been reduced to ALARP such that no further risk control or mitigation is practicable, cost-effective and proportionate. This is a substantial issue of policy non-compliance (see below) and also weighs strongly against the Proposed Development in the planning balance.

Societal risk and EIA conclusions:

- Collisions involving a Class 1 or 2 large commercial vessel in the vicinity of the Proposed Development would probably occur (as concluded in the Applicant's risk assessment) not more infrequently than every 20 years and the ExA notes that therefore this is at least once in the lifetime of the Proposed Development.
- In EIA terms, the likelihood of collision in the immediate vicinity of the Proposed Development between a Class 1 or 2 commercial vessel and another vessel should be rated at least 'Probable' (that is, 'Reasonably probable that it would occur during the project') and consequence rating of such collision should be rated 'Low' to 'Medium' because, even if incurring only multiple minor injuries, it would involve more than 'minimal operational impact to wind farm or shipping'. In EIA terms the primary marine navigational risk is therefore 'Tolerable' 'if appropriate and proportional mitigation is put in place...'.<sup>206</sup>
- No substantial cost-effectiveness analysis of risk controls was submitted in the application or to Examination. Therefore, the ExA is not satisfied that risks have been controlled to ALARP and the IMO FSA moral responsibility to '*limit risks to people life and health, to the marine environment and to property*' have probably not been fulfilled<sup>206</sup>.

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<sup>206</sup> 'Moral responsibility' is the term used in the IMO FSA to describe the approach taken in those guidelines to risk reduction in relation to peoples' life and health: see para 5.2.286 above.

- This means that societal concerns, including societal risk to the reputation of the marine authorities and of the port operators and owners needs to be considered on the balance of probability potentially to be adversely influenced by the Proposed Development.
- The methodology for rating likelihood and consequence of hazard occurrence applied in the NRA and NRA Addendum differs from that applied in the EIA to assess significance (discussed at para 5.2.314 above above). The consequence of this is that the likelihood and consequence of adverse economic effects to ports and shipping should be rated Significant in EIA terms and therefore negative in the planning balance.

Pilot transfer operations conclusions:

- Due to increased pressure on the Sunk deepwater channel and pilot station, there is likely to be increased demand from larger vessels for pilot transfer at NE Spit, whether or not existing channels in the Thames estuary are capital dredged.
- The Proposed Development would increase compression of traffic and consequently the level of hazard and perceived navigational risk for pilot transfer operations.
- The ExA discounts the findings of the Pilot Transfer Bridge Simulation (PTBS) for anything other than testing feasibility of pilot operations in 'normal', non-adverse operating conditions.

Effects on shipping routes:

- The perceived risk to navigational safety as an effect of the Proposed Development would be of a sufficient extent that there is a significant probability that masters of large vessels would not be confident of having sufficient sea room with safety margin to cope with emergency loss of power or situations involving conflicts of converging vessels, particularly in adverse Metocean conditions, and would therefore opt to deviate around the TEOW, incurring additional passage time and cost.
- The sea area in the 5nm immediately around the Thanet OWF (TOWF), whilst containing shipping routes, does not contain 'recognised sea lanes' in the intended sense of IMO definitions and NPS, nor do the routes give unique access to a lifeline port therefore the routes cannot be regarded as 'essential', therefore there are no relevant national or international policy obligations binding the decision-maker in this regard.
- The routes along the western and the northern perimeter of the TOWF are of strategic importance for shipping access to the Thames and Medway ports, due to time saving when approaching the Thames from the south and in adverse Metocean conditions.
- The extension of the TOWF to the west and north-west, even with SEZ as proposed, would probably increase perception of navigational risk for pilot transfer and passage for vessels over 240m. LOA and would consequently cause some ship masters to decide (at least in adverse Metocean conditions) to divert around the east and north of the TOWF, either picking up a pilot at Goodwin or Tongue PBDs or by dipping down to NE Spit; thereby having an adverse effect on the resilience of pilot operations and access to ports.

- **Effects on ports and port operations:** on the balance of probability, the effect of Proposed Development (even with SEZ) of additional risk to or displacement of pilot transfer operations would have some effect on resilience to adverse weather and accidents and thereby may have consequential adverse effects on river transit times, accessibility to, reputation and competitiveness of some London ports.
- The Applicant's assessment of economic effects of Proposed Development was as claimed by an IP and OP 'deficient, rushed and lacking in a number of areas' and the probability of adverse effects to Shipping and Port Operations and reputation is 'Likely to happen more than once in the lifetime of the project' with a consequence of at least: '...some operational impact to ... shipping' therefore is rated in accordance with the ES to be 'Unacceptable' and 'Significant in EIA terms'.

Policy compliance conclusions for the planning balance:

- NPS EN-3, paragraph 2.6.147 states that '...wind farms should not be consented where they would pose unacceptable risks to navigational safety after mitigation measures have been adopted'; at Deadline 6 the MCA confirmed that: 'the MCA is unable to agree that the proposed project is acceptable with regards to the safety of navigation...'
- The NRA as a fundamental input to the EIA is compromised by lack of consultation with commercial port interests during the pre-application stage and a generally insufficient level of engagement with the concerns consistently expressed by the marine regulatory stakeholders, contrary to NPS EN-3, paragraph 2.6.153 which states that: '*Applicants should establish stakeholder engagement with interested parties in the navigation sector early in the development phase of the proposed offshore wind farm... [to] allow offshore wind farms and navigation uses of the sea to successfully co-exist.*'
- Also contrary to NPS EN-3 para 2.6.157 which requires an NRA to be carried out in accordance with the relevant marine guidance, the ExA agrees with the MCA that the NRA and the NRA Addendum fail to provide adequate cost-effectiveness analysis of potential risk controls as recommended in IMO FSA guidance and discussed at paras 5.2.286 and 5.2.287 above.
- The ExA has regard to NPS EN-3 paragraph 2.6.162 and gives some weight to the likelihood of some diversion of shipping around the Proposed Development resulting in about an hour's additional steaming time, which is an appreciably longer transit time only if there is a late decision to make the diversion based on dynamic risk assessment.
- As required by NPS EN-3 para 2.6.168 there is a need for the SoS to have regard to the obstruction of navigation in the sea area containing relatively high traffic density and complex navigation patterns that would be created between the Proposed Development and the NE Spit navigational mark despite the SEZ; and to a lesser extent between the Proposed Development and the Elbow

navigational mark; in both cases additional danger to navigation would result.

- NPS Ports para 3.4.13 seems to the ExA to be both important and relevant to this DCO application; it cites the need for resilience of ports to account for *'short term demand peaks, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties without causing economic disruption through impediment to the flow of imports and exports'*.
- Despite the introduction of the SEZ the Applicant has not minimised negative impacts on shipping activity, freedom of navigation and navigational safety; as a consequent effect there is some probability of negative effects to the efficiency and resilience of continuing port operations as well as further port development that the SoS as decision-maker needs to take into account in regard to the MPS para 3.4.7.
- Despite the introduction of the SEZ, the Proposed Development encroaches on the critical sea space to the north-west of the TOWF which contains complex shipping movements and which is constrained by the NE Spit bank and its navigational mark to such an extent that it may constitute a danger to navigational safety of large vessels constrained by draught at least in adverse Metocean conditions and therefore not in compliance with NPS EN-3 para 2.6.168; and in regard to this assessment the opinion of the Applicant's expert witnesses and advisers is less reliable than that of the IPs including highly experienced local pilots and pilot launch coxswains.
- Contrary to NPS EN-3 para 2.6.153, the NRA was not founded on sufficient stakeholder engagement to properly assess hazards and sea room requirements to an extent that fundamentally undermines the conclusion of the ES that negative impacts resulting from effects of Proposed Development can be regarded as tolerable with mitigation.
- The SEZ proposed during the Examination period and the hazard identification and re-scoring process carried out thereafter were not founded on sufficient stakeholder agreement to be regarded as robust and objective and thus the resulting quantitative risk assessment addendum should be regarded as unreliable and therefore not compliant with NPS EN-3 para 2.6.157.
- Having regard to NPS EN-3 para 2.6.162, the perception of increased risk to safe navigation and pilot transfer operations in the general area of NE Spit would cause prudent mariners in certain Metocean and tidal conditions to deviate from their normal routing; in extreme conditions in which pilot service for the Ports of London and Sheerness can only be delivered at NE Spit this perceived risk could result in economic and reputational harm to ports and pilot services through loss of resilience and delay or diversion of shipping to other ports and is therefore contrary to NPS Ports para 3.4.13, being an important and relevant consideration in this DCO application, and also contrary to Marine Policy Statement para 3.4.7 which the SoS is obliged to take into account.

Planning balance summary:

- Taken together, a combination of adverse effects insufficiently mitigated and policy non-compliance, make marine navigation,

shipping and ports considerations a major net negative in the planning balance. The ExA attributes substantial weight to these findings.

#### 9.4.7. Biodiversity, ecology and natural environment effects

Designated sites conclusions:

- Any adverse impacts on designated sites and features are effectively mitigated and that mitigation is appropriately secured. As such, the relevant legislative and policy tests have been met and no changes to the DCO are proposed.
- This finding is a neutral consideration in the overall planning balance.

MCZ conclusions:

- There would not be a significant risk of hindrance to the achievement of the conservation objectives stated for any MCZs as a result of the Proposed Development and the relevant legislative and policy tests have been satisfied. Adequate security for mitigation and monitoring is provided within the Applicant's final draft DCO and no changes are required.
- This finding is a neutral consideration in the overall planning balance.

Intertidal habitats and ecology conclusions:

- A change to the DCO is required to include the SMRMP in the list of pre-construction plans and documentation to be approved under the DML at Schedule 12 in order to provide adequate security for the mitigation measures contained therein. Any adverse impacts on intertidal habitats are effectively mitigated and, subject to the aforementioned DCO change, that mitigation is appropriately secured. Accordingly, the relevant legislative and policy tests have been met.
- This finding is a neutral consideration in the overall planning balance.

Fish and shellfish ecology conclusions:

- The ExA does not believe it has been provided with sufficient evidence to enable it to agree with the Applicant's conclusions about the impacts of the Proposed Development on fish ecology, and specifically herring and sole spawning activities, as required under NPS EN-3 and the MPS. Consequently, a precautionary approach should be taken, and seasonal restrictions should be imposed by Condition on both DMLs as mitigation for potential impacts on the spawning grounds of Thames and Downs herring sub-stocks and Dover sole. This necessitates a change to the DCO. Subject to that change, there is adequate security for all of the required mitigation and that the policy tests have been satisfied.
- If the proposed DCO change is implemented, the ExA's findings are a neutral consideration in the overall planning balance.

Protected species conclusions:

- The Applicant has adequately assessed the potential impacts on protected species and the relevant legislative and policy tests have been met.
- This finding is a neutral consideration in the planning balance.

Subtidal habitats and benthic ecology conclusions:

- The Proposed Development has been designed taking into account the sensitive subtidal habitats and benthic ecology in this location. As such the relevant legislative and policy tests have been met.
- This finding is a neutral consideration in the overall balance.

Marine mammals conclusions:

- The methods of construction for the offshore elements of the Proposed Development have been designed so as to reasonably minimise significant disturbance effects on marine mammals, and mechanisms have been put in place to secure suitable noise mitigation measures. Consequently, the relevant legislative and policy tests have been met.
- This finding is a neutral consideration in the overall planning balance.

Ornithology conclusions:

- The ES, taken together with the additional clarification material submitted during Examination (summarised at [[REP6A-004](#)]), presents an adequate assessment of the effects on ornithology, and appropriate mitigation and monitoring measures have been secured. Overall, the relevant legislative and policy tests have been met.
- Taken together, ornithological considerations not related to HRA or Natura 2000 sites make a net neutral contribution to the planning balance.

Planning balance summary:

- Taken together, biodiversity, ecology and natural environment considerations are net neutral in the planning balance.

#### 9.4.8. Townscape, seascape, landscape and visual effects

- There are no significant seascape, landscape or visual effects from the Proposed Development to receptors on the Essex coast or the French or Belgian coasts.
- Onshore landscape or visual effects arising from the Proposed Development are not significant in EIA terms.
- On the Rochdale Envelope basis proposed there are no foreseeable adverse effects from either of the alternative technology strategies for the onshore substation as presented in the application.
- The LVIA assesses a significant combination effect of visibility of offshore WTGs and onshore substation to walkers on the England Coastal Path at Sandwich Flats, based on the Rochdale Envelope maximum design parameters for each part of the Proposed Development.
- The significant scale difference of proposed WTGs much larger than those of the existing TOWF, located on all sides of the existing array and with spacing and lines of orientation and symmetry that differ from the existing WTGs would produce an evident adverse visual effect when viewed from receptors and within sea views from the Thanet coast.

- Visual impact has been assessed as significant to receptors along the England Coastal Path and multiple viewpoints between Birchington on Sea (west of Margate) round the North Foreland to Dumpton Gap south of Broadstairs.
- TEOF would be visible partially over Ramsgate Harbour in the northern part of the view across Pegwell Bay from Sandwich Bay Estate and Sandwich Flats at about 20km range and the impact would be minor but significant. The introduction of the SEZ to the Proposed Development has the effect of marginally reducing the apparent lateral spread of the TEOF within views from certain viewpoints and so provides an element of mitigation, but the overall differential is negligible.
- The ExA concludes that there would be adverse landscape, seascape and visual effects arising from the proposed development but, because these are within the scope of such impacts contemplated as reasonable in NPS EN-1 and 3, they are policy compliant.
- It follows that, despite an adverse impact, this issue has a neutral effect for the purposes of the planning balance.

#### 9.4.9. Historic environment effects

- The effects of the Proposed Development on both the onshore historic environment and the offshore historic environment have been appropriately identified and adequate mitigation is secured through processes for archaeological investigation and reporting described in the Archaeology Outline Written Schemes of Investigation which are adequately secured in the DCO.
- - The effects of the Proposed Development on the setting of onshore historic environment assets above ground are assessed as not significant in EIA terms and the ExA agrees this to be the case, acknowledging that Historic England (HistE) have assessed a 'low' level of harm to the significance of the Margate Conservation Area as a consequence of the WTGs appearing above townscape when viewed from land.
- This issue makes a minor negative contribution to the planning balance.

#### 9.4.10. Construction effects

- Noise impacts from the construction access to the Baypoint Sports Club site to residential receptors at Ebbsfleet are a minor adverse consideration in the planning balance.
- Significant construction disruption to Pegwell Bay Country Park, Regional Cycle Route 15, the coastal path and to users of these facilities must be acknowledged as an adverse effect in the planning balance, but local authorities view this as acceptable and sufficiently mitigated if the Proposed Development is more broadly supported in policy terms.
- Other onshore construction matters are well managed and are a neutral consideration in the planning balance.



- 9.4.11. Noise & other public health effects
- Noise effects and other public health effects to human receptors of the Proposed Development are at most minor adverse and likely to be not significant. Secured monitoring and mitigation measures are adequate.
  - This is a neutral consideration in the planning balance.
- 9.4.12. Marine and coastal physical process effects
- Adverse impacts on marine and coastal physical processes are limited in scope, effectively mitigated and mitigation is appropriately secured.
  - Relevant NPS and MPS policy tests are met.
  - This issue is a neutral consideration in the planning balance.
- 9.4.13. Water environment effects
- The effects of the Proposed Development on water quality onshore and offshore have been adequately assessed and mitigated and mitigation is properly secured in the DCO.
  - This is a neutral consideration in the planning balance.
- 9.4.14. Air navigation, aviation and airports effects
- The DCO adequately secures the normal aviation safety lighting.
  - There are no residual adverse impacts on civil aviation. Any additional requirements arising from the possible return to service of Manston Airport are to be addressed by the operator of that facility.
  - There are no residual adverse impacts on military aviation.
  - This is a neutral consideration in the planning balance
- 9.4.15. Electric & magnetic fields (EMF) effects
- There are no outstanding concerns about the effects of EMF in relation to this DCO application.
  - This is a neutral consideration in the planning balance.
- 9.4.16. Fishing & fisheries effects
- The level of engagement between the Applicant and the fishing community in co-existence planning has been good and opportunities to build upon effective practice developed for the existing TOWF have been taken.
  - There would be some instances of individual harm to particular fisheries and vessels (largely dependent upon location and fishing method). Whilst mitigation has been applied and there is ongoing scope for the negotiation of further individual agreements between fishermen and the undertaker, some harm is unavoidable.
  - There are also instances of prospective benefit through employment, contracting and business opportunities in construction for fishermen in construction and operation.
  - Fish species impacts (including spawning effects and mitigations through seasonal controls) are adequately managed as detailed in section 5.3 above.

- Although specific recognition must be accorded to the individual concerns of and substantial adverse effects on some individual fishermen, vessels and businesses, due to the presence of benefits from development, the overall impact for the planning balance is net neutral in the planning balance.

#### 9.4.17. Effects on other infrastructure

- With the exception of the BritNed project, all cumulative effects and interfaces between the Proposed Development and other major projects, proposals and infrastructures have been well managed. This is a neutral consideration in the planning balance.
- If the DCO is granted, the Applicant, BritNed and the MMO are recommended to review the possible need for interface guidance on the relationship between the Proposed Development and the BritNed project, prior to the approval of and as part of the Construction Method Statements under both DMLs.

#### 9.4.18. Socio-economic effects

- Offshore and onshore construction would generate economic benefits arising from the manufacturing and installation of the OWF and related onshore facilities, but these are negligible in cumulative terms.
- There would be some disruption to existing businesses onshore, primarily during the construction period but also during operation. Due to the approach taken to site selection and design and consequent approach to CA (see Chapter 10), it is not clear that adverse effects to local business affected by construction and operation have been mitigated to the extent reasonably feasible.
- There would be disruption during construction to a limited number of local residents in the hamlet of Ebbsfleet. These effects are adverse but have been reasonably mitigated and the residual effects are considered to be policy compliant.
- Economic effects on shipping and ports are considered in Section 5.2. A relevant finding carried forward from that chapter is that the Proposed Development would lead to some diversion of shipping traffic, increased steaming time for some ships and decreased flexibility of access to pilot services, particularly for larger vessels in poor metocean conditions. These effects would reduce the efficiency, flexibility and resilience of port operations accessed from the Thames estuary. As is fully described in that section, these have not been mitigated and are in breach of policy.
- The ExA does not consider that the Applicant has adequately valued the economic harms arising:
  - from reductions in the flexibility, efficiency, cost effectiveness, competitiveness and resilience of major port facilities serving London;
  - to ships and shipping lines; and
  - to pilotage services.
- As is common in transport-related spatial and economic planning considerations, a number of relatively small individual impacts in terms of additional passage time taken and costs for individual

voyages or pilotage acts, or small numbers of additional days disrupted due to inability to provide pilotage services in poor metocean conditions, can give rise to substantial adverse effects in the aggregate.

- In relation to commercial fishing and fisheries, the ExA finds that there would be substantial disruptions to the operations and economic viability of individual fisheries and fishing vessels, primarily during construction but also on an enduring basis during operation.
- The construction and maintenance of the Proposed Development would also generate additional commercial and employment opportunities for vessel operators including fishermen in the Thanet area.
- The preparation by the Applicant of the Fisheries Liaison and Co-existence Plan to be certified by the SoS [REP3-060], which is also secured in the DMLs demonstrates a generally positive relationship with the fishing community, focussed on the securing of net social and economic benefit for that community from the development.
- The ExA views tourism and other social and economic effects of the Proposed Development onshore as neutral.
- Taken together, the socio-economic effects of the Proposed Development are net negative.

#### 9.4.19. Other effects

- All other matters arising from legal duties on the decision-maker, from policy and important and relevant considerations have been taken into account by the ExA. The majority do not give rise to any indication specifically for or against the making of the DCO.
- Reg 3A of the Infrastructure Planning (Decisions) Regulations requires the SoS to have regard to the need to prevent interference with legitimate uses of the sea and, bearing in mind the conclusions in Section 5.2 above, the ExA advises the SoS that such interference has not been prevented.

9.4.20. In reaching conclusions on the case for the Proposed Development, the ExA has had regard to NPS EN-1 and EN-3 as the relevant NPS, the LIR and all other matters which it considers are both important and relevant to the SoS's decision. It has further considered whether the determination of this application in accordance with the relevant NPS would lead the UK to be in breach of any of its international obligations where relevant. In general terms it has concluded that remaining NPS EN-1 and NPS EN-3 policy and PA2008 s104 provisions would be broadly complied with in respect of matters not identified above as being directly contrary to policy or weighing negatively in the planning balance.

9.4.21. However, important and relevant considerations that weigh against the benefits of the Proposed Development, taken together with the policy non-compliance identified above, mean that PA2008 s104(7) applies: *'the adverse impact of the proposed development would outweigh its benefits'*. These in summary are as follows.

- The Proposed Development unacceptably constrains sea room on the inshore route.

- The Proposed Development constrains shipping movement adjacent to the NE Spit PBD.
- Prudent mariners would be less likely to utilise the inshore route or to wish to access the NE Spit PBD by that route as a consequence.
- Recognising the sheltered inshore location of that PBD as a key means whereby accessibility to the Thames estuary and its ports is maintained during periods of poorer met-ocean conditions, constraints on the numbers or sizes of vessels able to access the NE Spit PBD and/ or transfers of shipping to other PBDs would reduce the number of days per year that the Thames ports would be accessible to shipping. There would be consequential delays to shipping with economic costs.
- The Applicant has not demonstrated that navigational risk can be reduced to ALARP with the Proposed Development in place.
- The Applicant has made limited assumptions about shipping traffic growth that would have the effect of interposing the Proposed Development as a more substantial risk to shipping and navigation than the Applicant has forecast, should higher growth rates occur. Amongst other effects, given the nature of London as a major market for ports services and the attractiveness of Thames estuary port locations with easy access to the M25, to international and national rail links together with the scale of existing and proposed (NSIP scale) port development in the region, the Proposed Development could act as an unwarranted constraint on the use of existing and development of future port facilities. This would run counter to the need case for port development in NPSP.
- Minor adverse effects in terms of the historic environment, construction noise on nearby residential receptors onshore (at Ebbsfleet) and disruption to recreational uses during construction have been taken into account in reaching this conclusion but whilst these do weigh against the Proposed Development, their weight in comparison with the major matters identified above is not substantial.

9.4.22. The renewable energy generation benefits of the Proposed Development are material and weighty. However, the ExA notes that in comparison with many recent OWF NSIP applications, at 340 MWe, the Proposed Development is relatively small in scale. The renewable energy benefits supporting the need case in NPS EN-1 are thus of a relatively small scale and lesser weight, relative to the strategic harms to the achievement of the NPSP need case and the adverse impact of failing to address policy on navigational safety in and access to the Thames estuary. The ExA judges these to be of greater weight.

9.4.23. The ExA notes that NPS EN-3 is supportive of the need for renewable energy generation being met broadly wherever the wind resource and sea conditions make it feasible in engineering and economic terms to do so and places the onus on the Applicant to assess site suitability and commercial viability in these respects (paragraphs 2.6.30 - 32). That being said however, the ExA has noted that a fourth round of OWF development is being commenced by tCE. There is no immediate sign that the UK is becoming short of physically and economically feasible locations to develop OWF generating stations. An additional 340 MWe of

renewable OWF generating capacity will still be able to be added to the UK's generating portfolio in a considerable number of locations over the foreseeable future.

9.4.24. Turning to consider shipping, navigation and ports infrastructure, the River Thames and its estuary is the only navigable seaway connecting the major market for ports services in London to international shipping lanes in the North Sea and English Channel. A strategic constraint on the safety and accessibility of these waters and the resilience of their ports and shipping services arising from the Proposed Development is a substantial and weighty constraint. It is one that cannot readily be addressed by mitigating measures: those measures proposed by the Applicant and subject to examination have not proven to be sufficient to address serious underlying concerns. This analysis adds to the ExA's view that the planning balance favours the view that the retention of existing conditions including navigational safety and operational efficiency in the Thames estuary should be preferred over development which could constrain that safety, accessibility and resilience.

9.4.25. Bringing the above conclusions together, the ExA has taken full account of and attributed substantial weight to the Government's strong policy support for energy schemes that meet the need case for new generation articulated in NPS EN-1 and particularly provide low carbon energy. It has attributed substantial weight to the fact that the Proposed Development is generally supported by the host local authorities (KCC, DDC and TDC), which did not raise matters running against the principle of development consent in their LIRs. It has positively weighted the lack of adverse submissions from the surrounding land-based community. It has positively weighted the significant effort made by the Applicant to collaboratively engage with and minimise harm to the commercial fishing community. However, for reasons set out above, the ExA considers that NPS EN-3 non-compliance on marine matters, the effect of PA2008 s104(3) in those circumstances and the other adverse impacts recorded in paragraph 9.2.26 above which (in terms of PA2008 s104(7)) mean that the adverse impact of the development would outweigh its benefits and determine that development consent should be withheld.

## **9.5. OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT**

9.5.1. Because the Proposed Development does not meet specific relevant Government policy set out in NPS EN-3, as a matter of law, a decision on the application in accordance with any relevant NPS (PA2008 S104(3)) also indicates that development consent should be withheld.

9.5.2. In the ExA's judgement, the strategic benefits of the Proposed Development, providing significant additional renewable energy generation, are not outweighed by the negative impacts that have been identified in relation to the construction and operation of the Proposed Development. The harm that the ExA has identified outweighs the benefits of the Proposed Development.

9.5.3. The ExA therefore concludes that, for the reasons set out in the preceding chapters and summarised above, development consent should be withheld.

# **10. COMPULSORY ACQUISITION AND RELATED MATTERS**

## **10.1. INTRODUCTION**

10.1.1. This Chapter records the Examination of Compulsory Acquisition (CA) and Temporary Possession (TP) proposals included in the application and related issues and reaches conclusions and makes recommendation upon them.

10.1.2. Chapter 9 of this Report concludes in summary terms that:

- the Proposed Development contravenes NPS policy relevant to shipping and navigation to the extent that it is not in accordance with it (PA2008 s104(3)); and
- the adverse impact of the Proposed Development on balance would outweigh its benefits (PA2008 s104(7)).

It follows that the SoS is not recommended to make the Order.

10.1.3. The making of an Order containing CA powers relies upon there being a compelling case in the public interest to acquire the land. If the SoS agrees with the ExA's conclusion on the case for development consent in Chapter 9, it follows that there is no such compelling case. Those circumstances are addressed in section 10.7 below at paragraph 10.7.2 (the primary CA and TP recommendation).

10.1.4. If the SoS does not agree with the ExA's conclusion on the case for development consent in Chapter 9 and proposes to make the Order, then the case for the CA and TP powers needs to be considered against all remaining legislative and policy tests and the individual objections to proposals need to be considered. Sections 10.2 to 10.5 of this Chapter carry out those tasks. Section 10.7 below at paragraph 10.7.6 (the alternate CA and TP recommendation) addresses the balance of these considerations and makes a recommendation to the SoS, to address circumstances that would apply if the SoS is minded to grant development consent.

## **10.2. THE REQUEST FOR CA AND TP POWERS**

10.2.1. The application includes proposals for the CA and TP of land and rights over land.

10.2.2. The ExA established an ongoing diligence process for the Applicant at the outset of the Examination [[PD-012](#)], with standing questions ExQ1.3.5 – 8 seeking updates at each deadline recording any changes to information about land and rights, including those of the Crown and statutory undertakers and about objections and changes in the status of objections. The following documents set out the most up-to-date record of the powers sought, and the persons and land affected by the request available at the close of Examination.

- the Applicant's preferred draft DCO (dDCO) submitted at D8 [[REP8-013](#)] which provides the CA and TP powers sought and the Works for which they are sought;
- the Land Plans (Onshore) Revision D [[REP2-011](#)] which show the affected land and whether it is subject to the permanent acquisition of land and/ or rights or to temporary possession and locations in which there are cable route options;
- the Crown Land Plan Revision D [[REP4B-017](#)];
- the Special Category Land Plans Revision C [[REP2-037](#)];
- the Book of Reference (BoR) Revision C [[REP2-028](#)];
- The Statement of Reasons (SoR) Revision B [[REP7-027](#)]; and
- a Funding Statement (FS) Revision B [[REP3-011](#)].

10.2.3. These documents taken together form the basis of the analysis in this Chapter. References to the BoR and the Land Plans in this Chapter from this point should be read as references to the latest revisions cited above. It should be particularly noted that all Land Plan plot references employed in this Chapter are correct as per the most recently submitted Land Plans.

10.2.4. Land over which CA and / or TP powers are sought is referred to in this Chapter as the Order land.

### **10.3. THE PURPOSES FOR WHICH THE POWERS ARE SOUGHT**

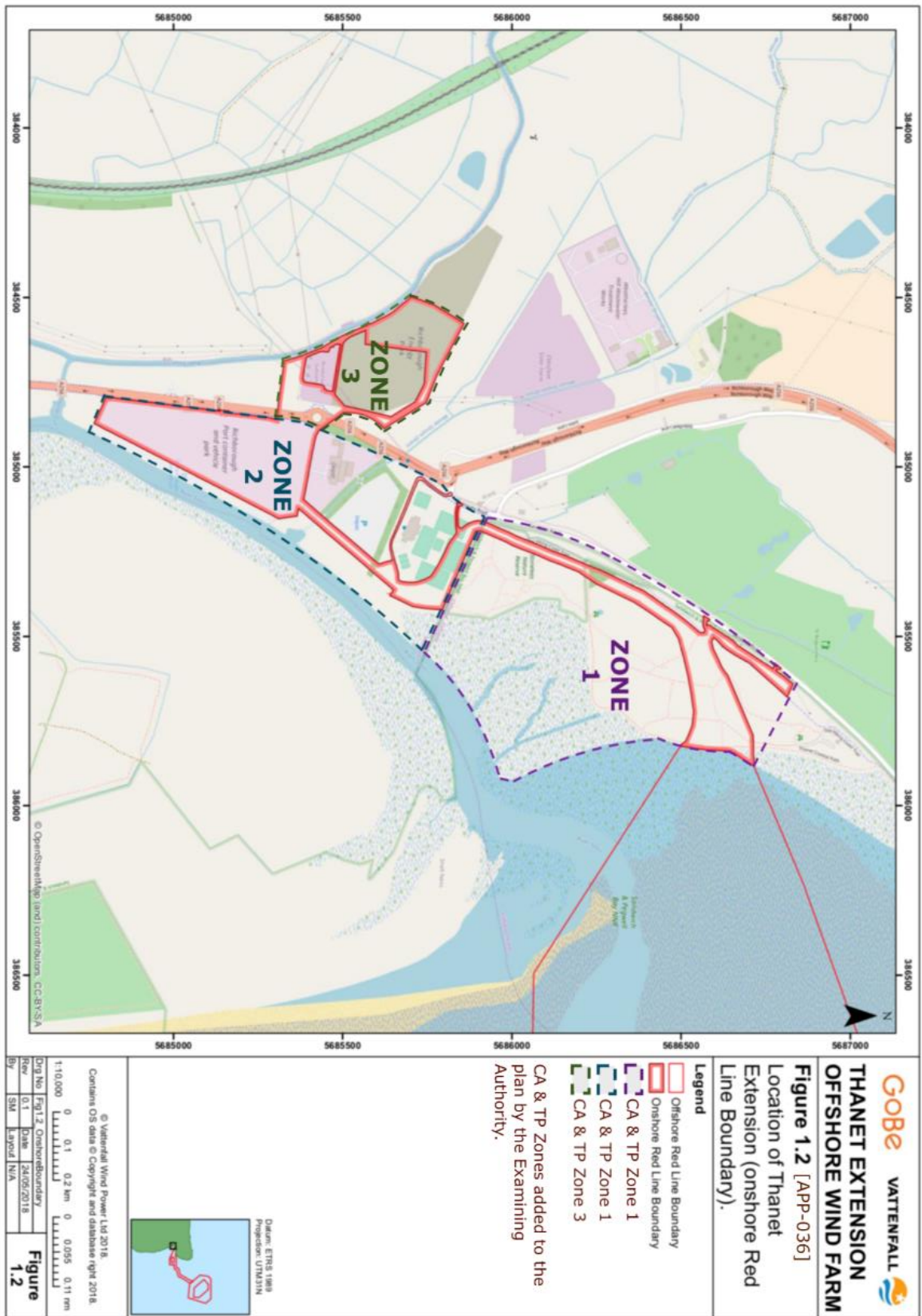
10.3.1. The purposes for which the CA and TP powers are sought are set out in the BoR [[REP2-028](#)] and the SoR [[REP7-027](#)]. In summary terms, the powers sought relate to the onshore elements of the Proposed Development, most easily described with reference to three descriptive 'zones', shown on Figure 10.1 below.

- **Zone 1** in figure 10.1 (Pegwell Bay) relates to the passage of the proposed export cable corridor from the landfall site at Pegwell Bay through open foreshore land in recreational and nature conservation uses.
- **Zone 2** in figure 10.1 (Richborough Port) relates to the construction of the proposed onshore substation, access and passage of the proposed export cable corridor through land with a range of business and related uses (the Baypoint Club, British Car Auctions (BCA), the UK Border Force Compound and land subject to other leases/occupancies including that of Crostline Ltd) to the proposed substation site. Ramac is the freeholder of this land as shown in figure 10.2.
- **Zone 3** in figure 10.1 (Richborough Energy Park) relates to the passage of a proposed grid connection cable corridor from the proposed substation to the grid connection point in Richborough Energy Park.

10.3.2. CA is sought for the land that would be required permanently, for construction and operation of the onshore substation at Richborough. The proposed substation site (in Zone 2) is currently subject to lease by the UK Border Force (Ministry of Justice (MoJ)) for use as a secure



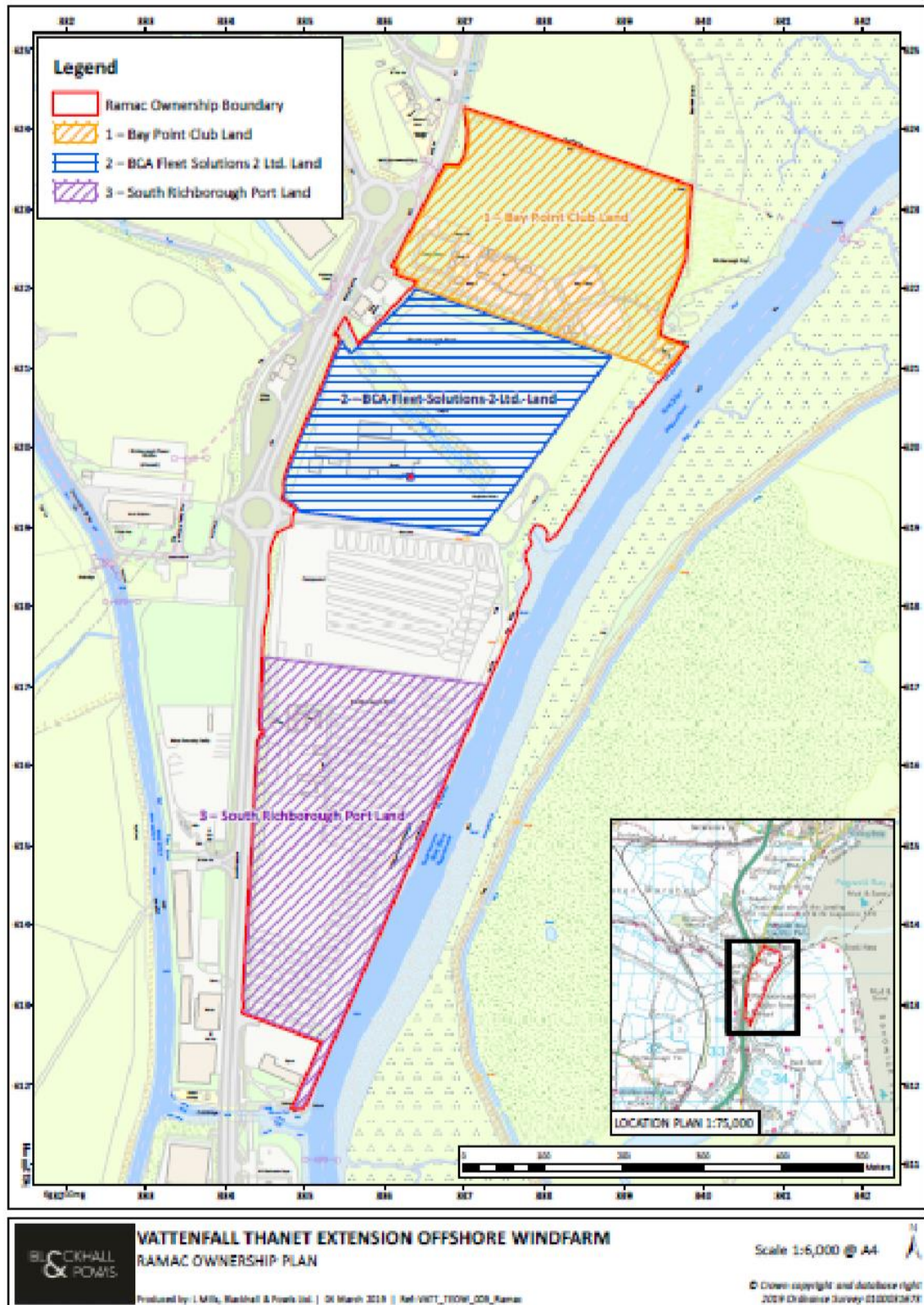
**Figure 10.1: CA and TP Descriptive Zones<sup>207 208</sup>**



<sup>207</sup> Adapted from ES Vol 1 Figure 1.2 [APP-036] with annotation by the ExA

<sup>208</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

**Figure 10.2: Distribution of Uses and Tenancies in Zone 2<sup>209 210</sup>**



<sup>209</sup> Applicant’s Response to Oral Submissions by Ramac at CAH1: Figure 4 [REP3-012].

<sup>210</sup> Reproduced from Applicant’s documentation: do not scale. Refer to original.

compound and CA is also sought for replacement land, enabling the undertaker to prepare and provide an equivalent secure compound to which the UK Border Force operation could transfer. The need for and extent of the proposed CA in Zone 2 are objected to by Ramac Holdings (Trading) Ltd (Ramac), the freeholder of the UK Border Force land, the proposed replacement land and other land subject to commercial leases in Zone 2 (Baypoint Club, BCA and Crostline Ltd).

10.3.3. CA of rights is sought for the construction and operation of an onshore electricity export cable alignment, from the landfall at Pegwell Bay to the proposed substation (Zones 1 and 2). It is sought for the construction and operation of the onshore electricity grid connection cable alignment, from the proposed substation to the grid connection at Richborough Energy Park (Zone 3), where an issue emerges, in that the CA request includes provision for three route alignment corridor options through the site. It is also sought for access to facilities requiring maintenance.

10.3.4. TP is sought for time-limited processes associated with construction, including compounds, lay down, materials and soil storage, construction access and the installation of temporary site fencing.

10.3.5. The primary works giving rise to the CA and TP request are shown on the Onshore Works Plans Rev B [[REP-160](#)] and recorded in the dDCO [[REP8-013](#)] as the following:

In Thanet District Council area

- Work No. 4— Onshore connection works within Pegwell Bay Country Park consisting of up to four cable circuits and communications cables laid underground or from Work No. 3A to Work No. 5 running in a south westerly direction including a temporary works area.
- Work No. 4A— Four subsea export cables and fibre optic cables connecting to up to four transition joint bays located below ground to facilitate onshore connection works within Pegwell Bay Country Park.
- Work No. 4B— Four subsea export cables and fibre optic cables to facilitate onshore connection works within Pegwell Bay Country Park, and where required works to facilitate horizontal directional drilling.
- Work No. 5— A new temporary construction compound within Pegwell Bay Country Park including a new temporary vehicular access and temporary widening and upgrades to an existing vehicular access from Sandwich Road and modifications to the junctions of access and Sandwich Road.
- Work No. 6— Upgrading and widening of existing access from Sandwich Road.

In Thanet and Dover District Council areas

- Work No. 7— Onshore connection works consisting of up to four cable circuits and communication cables laid underground from Work No. 4 to Work No. 13 running in a south westerly direction and crossing the Minster Stream.
- Work No. 8— A new temporary vehicular access track running in a north easterly direction from Sandwich Road to Work No. 7 including

permanent modifications to the junction of the new vehicular access track and Sandwich and the permanent installation of an access gate.

- Works No. 9— The construction of a temporary works area.
- Work No. 10— Temporary widening and upgrade of an existing private road running in an easterly direction from Sandwich Road.
- Work No. 11— The construction of a temporary works area.
- Work No. 16— Onshore connection works, consisting of up to two cable circuits and communications cables laid underground from Work No. 13 to the National Grid 400kV substation at Richborough Energy Park running in a westerly direction crossing under the A256 and then in a northerly direction including temporary works areas and modifications and upgrades to the existing Richborough Energy Park access off the A256.

In Dover District Council area

- Work No.12— Temporary widening and upgrade of an existing private road running in an easterly direction off the roundabout on the A256.
- Work No. 13— A new onshore substation including a new vehicular access track from the private road off the eastern exit of the roundabout on the A256 and including onshore connection works to the extent that they connect to the onshore substation and onward connection works.
- Work No. 14— Works to facilitate the construction of the onshore substation (Work No. 13) including a new temporary construction compound, relocation of Ministry of Justice vehicle holding area, removal and relocation of associated structures, vehicle parking, access ways, CCTV, security fencing, portable buildings and utilities connections.
- Works No. 15— Substation landscaping and biodiversity enhancement area, including planting and hard-standing.

10.3.6. The extent of land and/or rights requirements for the primary works, whether land and/ or rights are proposed to be acquired permanently (CA) or temporarily (TP) and the specific reasons for acquisition are recorded in the Land Plans [[REP2-011](#)], the BoR [[REP2-028](#)] and the SoR [[REP7-027](#)].

10.3.7. In addition to the primary works, further onshore works are proposed that in turn form elements of the case for CA and/ or TP. These are described in two ways:

- as works falling within the definition of development (associated development) (the 'lettered works') that may be delivered at any location within the Order Land as may be necessary or expedient; and
- ancillary works (dDCO Sch 1 Part 2 [[REP8-013](#)]) which are not development.

Both associated development (the lettered works) and ancillary works are subject to the caveat that they '*would not give rise to any materially new or materially different environmental effects from those recorded in the environmental statement.*' (dDCO Sch 1 Part 1 and Part 2 Para 1(d) [[REP8-013](#)])

Further Onshore Works (Associated Development)  
(Sch 1 Part 1 – the ‘lettered works’)

- a. works to secure vehicular or pedestrian means of access including the creation of new tracks, footpaths, and widening, upgrades, creation of bell mouths, creation of temporary slip roads and improvements of existing tracks, footpaths and roads;
- b. car parking areas, welfare facilities, temporary offices and workshops;
- c. bunds, embankments, swales, landscaping, boundary treatments and works to mitigate any effects of the construction, operation or maintenance of the authorised project;
- d. spoil and equipment storage;
- e. jointing pits, manholes, marker posts, link boxes, earthing and other works associated with laying ducts and cables and fibre optic cables and pulling cables and fibre optic cables through cable ducts:
- f. water supply works, foul drainage provision, surface water management systems, temporary drainage during installation of ducts, cables and fibre optic cables and at the onshore project substation and culverting;
- g. works of restoration;
- h. fencing or other means of enclosure;
- i. works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses located above the level of mean highwater springs (MHWS);
- j. working sites and mobilisation areas in connection with the construction of the authorised development;
- k. bowzers, septic tanks, generators and standby generators;
- l. works for the provision of apparatus including cabling, water and electricity supply works;
- m. habitat creation and archaeological works; and
- n. such other works, apparatus, plant and machinery of whatever nature as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project.

Ancillary works onshore (Sch 1 Part 2)

- Temporary works for the benefit or protection of land or structures affected by the authorised development; and
- Such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which would not give rise to any materially new or materially different environmental effects from those recorded in the environmental statement.

10.3.8. The extent of land and/or rights requirements for the lettered and ancillary works are not recorded in the Land Plans [[REP2-011](#)], the BoR [[REP2-028](#)] and the SoR [[REP7-027](#)] in detailed terms. These are empowered to take place in the Order Land. However, the over-arching principle is that they would only take place on land for which there was a justification for CA and/ or TP for primary works.

## **10.4. LEGISLATIVE & GUIDANCE REQUIREMENTS**

- 10.4.1. CA powers can only be granted if the conditions set out in sections (s)122 and s123 of Planning Act 2008 (PA2008), together with relevant guidance in "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the Former Department for Communities and Local Government (DCLG) CA Guidance) are met.
- 10.4.2. Section 122(2) of PA2008 requires that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate<sup>211</sup>.
- 10.4.3. Section 122(3) of PA2008 requires that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.
- 10.4.4. Section 123 of PA2008 requires that one of three procedural conditions in subsections (2) to (4) must be met by the application proposal, namely:
- 2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
  - 3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.
  - 4) The condition is that the prescribed procedure has been followed in relation to the land.

It should be stated from the outset that the ExA is satisfied that the condition in sub-section (2) is met.

- 10.4.5. A number of general considerations also have to be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to CA must have been explored;
  - the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
  - the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
  - the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

These matters were tested in the Examination and are reported on below.

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<sup>211</sup> DCLG CA Guidance

10.4.6. Further to Part 1 of Schedule 5 to PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated DCLG CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers as are provided for CA, as by definition such powers do not seek to permanently deprive or amend a person's interests in land.

10.4.7. Relevant special statutory considerations are as follows:

Statutory undertakers' land, rights and apparatus

- PA2008 s127 which provides that statutory undertakers' land or rights that are the subject of an unwithdrawn representation by the statutory undertaker may only be taken where the SoS is satisfied that:
  - in relation to land (subsection (3)):
    - a. *it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or*
    - b. *if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking...* [and / or]
  - in relation to rights (subsection (6)):
    - a. *the right can be purchased without serious detriment to the carrying on of the undertaking, or*
    - b. *any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.*
- PA2008 s138 which provides that where land is subject to relevant rights or apparatus benefiting a statutory undertaker, that right may only be extinguished and or the apparatus removed if the SoS is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

National Trust and open space land

- PA2008 s130 which provides that where land is held inalienably<sup>212</sup> by the National Trust that is the subject of an unwithdrawn objection to CA by the National Trust, the making of an Order is subject to Special Parliamentary Procedure (SPP). If SPP is required, the SoS may not make the Order containing the relevant CA power until SPP has been carried out.
- PA2008 s132 which provides that where land is (amongst other categories) public open space and is subject to CA of rights, SPP applies unless the SoS is satisfied that a relevant exception (set out in

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<sup>212</sup> The National Trust is empowered to declare and hold land inalienably (not on a trust for sale and for all time, contrary to the general rule against perpetuities) under section 21 of the National Trust Act 1907 and/or section 8 of the National Trust Act 1939.

subsection (3) to (5)) also applies and that exception is described on the face of the Order. The exceptions are:

- (subsection (3)) that once burdened with the right to be acquired, the land will be no less advantageous to the persons in whom it is vested, other relevant persons and the public; or
- (subsection (4)) replacement land subject to the same rights and providing the same benefits will be provided; or
- (subsection (4A)) there is no suitable land for exchange (or none at less than prohibitive cost) and commencement of the Proposed Development sooner than would be the case were SPP to apply is strongly in the public interest; or
- (subsection (4B)) the rights required to serve the Proposed Development would be temporary (albeit long-lived); or
- (subsection (5)) the Order land does not exceed 200 sq m in extent and giving of other land in exchange is unnecessary to serve the interests of persons in whom it is vested, other relevant persons and the public.

Crown land and rights

- PA2008 s135 provides that (subsection (1)) an Order may only provide for the CA of an interest in Crown land if it is for the time being held otherwise than by or on behalf of the Crown and the appropriate Crown authority consents; and (subsection (2)) requires the consent of the appropriate Crown authority to any other provision affecting the Crown, absent which the Order may not be made.

10.4.8. Reference must be made to prospective legislated changes to the TP system applicable within England and Wales. The Neighbourhood Planning Act 2017 (NPA2017) has been enacted and contains provisions which amount to a codification of new TP practice. In recognition of the greater extent to which TP is being sought by scheme promoters and of the extended durations for which TP can sometimes be sought, the provisions in general terms enhance the rights of APs subject to TP, with a view to ensuring that they have equivalent or proportionate rights to notice and to relevant compensation to those already available to APs subject to CA. However, as of the closure of this Examination, the relevant provisions had not commenced. The ExA examined the question of how the pending status of these provisions should be responded to and this issue is addressed in Section 10.6 of this Report.

10.4.9. The ExA has taken all relevant legislation and guidance into account in its reasoning below. Relevant conclusions are drawn at the end of this Chapter in relation to both CA and TP.

## **10.5. EXAMINATION OF THE CA AND TP CASE**

10.5.1. The ExA's Examination of the application included consideration of all submitted written material relevant to CA and TP. We asked questions of the Applicant about the justification for the powers sought. We held Compulsory Acquisition Hearings (CAH1 and 2) and carried out unaccompanied (USI) and accompanied (ASI) inspections of land subject to CA and TP requests. These processes are described below.



## Written processes

- 10.5.2. The following Relevant Representations (RRs), Written Representations (WRs) and Additional Submissions (ASs) set out objections to the CA or TP request in the application or to the effects of it, and/ or to matters relevant to special category land:
- Ramac (the majority freeholder of land in Zone 2 proposed as the substation and replacement land location and landlord of the UK Border Force (MoJ) and Crostline) [[RR-056](#)], [[REP1-089](#)], [[REP5-055](#)] and [[REP6-080](#)]; [[REP6-067](#)] Applicant SoCG
  - Crostline Ltd. (a tenant of Ramac) [[REP1-105](#)]; and
  - The National Trust (in relation to special category land under PA2008 s130) [[RR-059](#)], [[REP1-117](#)], [[REP1-118](#)], [[REP1-119](#)], [[REP1-120](#)], [[REP2-043](#)], [[REP3-080](#)] and [[REP6-091](#)].

These submissions and the Applicant's responses to them are fully considered by the ExA below.

- 10.5.3. Additionally, the following RRs, WRs and ASs set out objections to the CA or TP request in the application or to the effects of it, and/ or to matters relevant to special category land but withdrew their representations before the conclusion of the Examination.
- NLL (a statutory undertaker, in relation to special category land under PA2008 ss 127 and 138) [[RR-010](#)], [[REP1-121](#)], [[REP1-122](#)] and [[AS-019](#)] (withdrawal);
  - NG (for NGET and NGG) (a statutory undertaker, in relation to special category land under PA2008 ss 127 and 138) [[RR-027](#)], [[REP1-124](#)], [[REP1-125](#)], [[REP1-126](#)] and [[AS-018](#)] with [[REP6A-017](#)] (withdrawal); and
  - UKPN (for SPN) (a statutory undertaker, in relation to special category land under PA2008 ss 127 and 138) [[RR-012](#)] and [[AS-021](#)] (withdrawal).

- 10.5.4. The ExA's first written questions (ExQ1) included questions relevant to CA and TP [[PD-012](#)], at Matter 1.3 which can be summarised as addressing the following issues:
- Whether the Proposed Development affects the land, rights or apparatus of any statutory undertakers (PA2008 ss127 and 138)?
  - Whether any inalienable National Trust land is engaged (PA2008 s130)?
  - Whether commons or open spaces etc are engaged (PA2008 ss131 or 132)?
  - Whether ongoing diligence had identified any Crown Land vested in the Crown Estate and / or any relevant Ministers or public authorities meaning that consent pursuant to PA2008 s135 might be required?
  - The state of play on diligence around land and rights documents, including whether any new APs had emerged and any new prospective objections to CA and TP had been raised.
  - Questions about individual plots and groups of plots.

10.5.5. Additionally, ExQ1 requested the Applicant to establish and maintain an ongoing system recording the outcome of its land and rights diligence, up to the end of the Examination and to provide updated documents as necessary to respond to any changes. Monitoring tables were provided by Applicant responding to ExQ1.3 matters at the following deadlines:

- Table - ExQ1.3.5 (Crown Land) at D2, D3, D4 and D5 [[REP5-032](#)];
- Table - ExQ1.3.6 (General CA and TP Objections) at D2, D3, D4 and D7 [[REP7-020](#)];
- Table - ExQ1.3.7 (Statutory Undertakers land and rights) at D2, D3, D4, D5, D6 and D7 [[REP7-023](#)]; and
- Table - ExQ1.3.8 (Statutory Undertakers apparatus) at D2, D3, D4, D5, D6 and D7 [[REP7-024](#)].

The most recent of these tables are considered in this Chapter and referenced above.

10.5.6. The ExA maintained the CA and TP process under review throughout the Examination. There were no responses to or changes to these tables submitted by APs in the final deadlines and so the conclusions that they record in their latest versions can be relied upon and have been drawn into the CA and TP conclusions of this Report. The relevant tables are individually referenced as required below.

10.5.7. The ExA's second written questions [[PD-016](#)] at Matter 2.3 asked about the following issues:

- the status of Crown Land (relating to tCE and MoJ);
- the need for Crown consent under PA2008 s135 relating to both offshore development (the grant of a Crown lease) and for the relocation of the UK Border Force compound (MoJ);
- the justification for and the extent of land subject to CA in Zone 2, having regard to the indirect route taken by the cable alignment between the landfall location and Richborough Energy Park, the substation location and the need to relocate the UK Border Force Compound; and
- the justification for the proposal for three optional cable alignment routes within the Richborough Energy Park (Zone 3).

10.5.8. The ExA's third written questions (ExQ3) [[PD-019](#)] at Matter 3.3 asked for information about the justification for the proposal for three optional cable alignment routes within the Richborough Energy Park (Zone 3). The ExA's final requests for information under EPR Rule 17 (R17Qs) [[PD-020](#)] asked for further information clarifying the position in relation to Crown consent (PA2008 s135).

## Hearings

10.5.9. The ExA held two CAHs as described from paragraph 1.4.17 of this Report.

10.5.10. CAH1 on 21 February 2019 [[EV-018](#)] (Agenda) [[EV-039](#)] (Audio) was used to orally examine the Applicant's underlying case for CA and TP, to test whether relevant legislative and policy requirements that arise

irrespective of any objections to CA and TP had been met. The ExA provided an opportunity for APs wishing to be heard on CA and or TP matters to attend CAH1 to hear and raise matters bearing on the Applicant's case but not to be heard in respect of their own objections. The Applicant, the National Trust [RR-059] and Ramac [RR-056] requested to be heard and were heard at CAH1. The Crown Estate (tCE) [RR-004] attended as an observer, but as matters relevant to its interests were raised, its representative kindly agreed to be heard on those.

10.5.11. CAH2 on 18 April 2018 [EV-066] (Agenda) [EV-058][EV-059] (Audio) enabled APs to be heard on their individual objections. The Applicant, the National Trust [RR-059], Ramac [RR-056] and Crostline Ltd (a Ramac tenant and an AP) [REP1-105] requested to be heard and were heard at CAH2.

10.5.12. The ExA has considered all matters raised orally at CAH1 and CAH2.

### **Site Inspections**

10.5.13. The ExA conducted three unaccompanied site inspections (USIs) in which it was able to view land subject to CA and TP requests described in Figure 10.1 above as Zone 1 from public open space, the adjacent public highway and from public rights of way (PRoW) across or adjacent to it.

- In USI1 on 30 October 2018 [EV-001], in addition to the wider seascape, landscape and townscape setting of the Proposed Development, the ExA inspected foreshore and land subject to CA in Pegwell Bay Country Park and Stonelees Nature Reserve in Zone 1. Land in Zones 2 and 3 could not be accessed, but inspections were carried out from the highway. Longer range views were limited by poor visibility and rain.
- USI2(a) on 10 December 2018 [EV-008] was a repeat inspection of the locations inspected in USI1, but dry weather conditions enabled a fuller appreciation of the accessible land. PRoWs were used to fully inspect publicly accessible locations in the Stonelees Nature Reserve.
- USI3(a) and (b) on 18 February 2019 [EV-040] was a further repeat inspection of the public open space locations inspected in USI1 and 2(a) (Pegwell Bay Country Park) and Stonelees Nature Reserve at the late morning and in the early evening, with excellent visibility. It was held before the commencement and after the conclusion of ASI1 held on the same day. The inspection focussed on public utilisation of the open space and PRoWs during the school half term holiday period.

The USIs recorded above enabled all matters relevant to CA and TP proposals affecting land in Zone 1 to be inspected.

10.5.14. The ExA conducted one accompanied site inspection (ASI) relevant to CA and TP, ASI1 [EV-011] (Annex H) on the afternoon of 18 February 2018. The weather was dry with excellent visibility. ASI1 entered onto private land with consent, to inspect land subject to CA and TP requests described in Figure 10.1 above as Zones 2 and 3. This inspection enabled the ExA to access the following sites:

Figure 10.1: Zone 2

- Bay Point Club, enabling the sports club and playing field facilities to be viewed and following the proposed cable alignment around the site to the north and east;
- the British Car Auctions (BCA) compound, enabling the nature and extent of the existing use (car storage and auctions) to be viewed and following the proposed cable alignment adjacent to the eastern site boundary; the BCA access road from the A256 provided views into the UK Border Force compound and the proposed substation site from the east.
- River Stour Quay (Port of Richborough) provided views into the UK Border Force compound and the proposed substation site from the north and east.
- the A256 (public highway) providing views into the UK Border Force compound and the proposed substation site from the west;
- the Crostline Ltd yard, providing views into the UK Border Force compound and the proposed substation site from the south, views of the extent of the land subject to CA to the south as replacement land for UK Border Force and the nature and extent of existing uses by Crostline Ltd (car export and scrappage) and other occupiers (a scaffolding business) on the land;
- It should be noted that, given that law enforcement-related activities are conducted within the UK Border Force compound, the ExA did not request access to this land. The nature and extent of the land and its use could be adequately discerned from a thorough inspection of its perimeter.

Figure 10.1: Zone 3

- Richborough Energy Park was inspected to view the cleared location of the former Richborough generating station, the existing distribution network substation, the linked substation for the existing Thanet OWF onshore electrical connection, the NGET Richborough transmission substation and the NLL Nemo Link substation. Elements of the latter two facilities remained under construction. The inspection reviewed three optional cable alignment corridors enabling the substation for the Proposed Development (on the UK Border Force compound) to be connected to the NGET Richborough transmission substation, passing through Richborough Energy Park whilst not unduly constraining land for other energy facilities under construction and proposed for that site.

10.5.15. IPs and APs were provided with an opportunity to nominate land for inclusion in the site inspection programme. The USI programme commenced before the PM but inspection notes were published and enabled IPs and APs to follow the ExA's work. The ExA was able to inspect all land that it had been requested to inspect for CA and TP purposes in the USIs and the ASI recorded above.

10.5.16. Taken together, the three USIs and the one ASI provided the ExA with an understanding of the location and condition of all the plots proposed to be subject to CA and TP powers.

## **10.6. CONSIDERATION OF CA AND TP ISSUES**

- 10.6.1. This section sets out the Applicant's general case for CA and TP and responses to that case.
- 10.6.2. It then records the consideration of cases for the CA and/ or TP of individual parcels of land or rights that are relevant to be considered for decision-making purposes, including the consideration of land and rights in respect of which by the end of the Examination there was no formal outstanding objection.
- 10.6.3. Finally, this section considers a range of technical matters relevant to CA and TP, including statutory undertakers and protective provisions, National Trust, public open space and Crown land considerations, the availability of funds for compensation and human rights considerations.

### **THE APPLICANT'S CASE**

- 10.6.4. The Applicant's written case is made out in the SoR [[REP7-027](#)]. The SoR outlines the land required by the individual works in the Proposed Development. It describes the strong NPS and related policy support for renewable energy generation and OWF development (largely as described in Chapter 3 of this Report). It identifies that there is funding in place for the proposed acquisition (paragraph 8.26) (as described in the FS [[REP3-011](#)]). It then proceeds to identify that in the Applicant's view there is a compelling case in the public interest for the acquisition of the land sought.

*'The Project will contribute to the national demand for generation of power using renewable energy. The case for this is made out in Government Policy as outlined in the Statement.*

*'The Applicant has sought, and will continue to seek, to negotiate acquisition of interests where possible by voluntary agreement and is seeking appropriate powers to ensure that the Project can be brought forward in a reasonable and commercial time frame.*

*'The Applicant has a well worked up scheme and funding sufficient to take the Project forward.*

*'In summary the Applicant considers the Project to be:*

- *In accordance with established and emerging national policy in relation to NSIPs contained in NPS EN-1, NPS EN-3 and NPS EN-5;*
- *Required to meet a pressing national need for electricity generating capacity; and*
- *Entirely necessary and proportionate to the extent that interference with private rights is required.'* (paragraphs 8.28 – 31 [[REP7-027](#)])

- 10.6.5. It should be noted that the most recent version of the SoR was submitted to the Examination at D7, after the conclusion of CAHs at which a substantial case had been set out by Ramac that the Applicant had not justified the specific requirement for or extent of land proposed to be subject to CA in Zone 2 in any more than general terms. This

notwithstanding, the D7 SoR did not make any more than a generic (policy supported development and facilitation of policy supported development) case for this land.

- 10.6.6. Oral submissions by Ramac and questions from the ExA identified concerns about the extent of and justification for the Zone 2 CA in strategic CAH1 [[EV-018](#)] [[EV-039](#)]. The following matters arose:
- whether a case had been made for the extent of land required for the substation (substation size);
  - whether the selected substation site was the best site (notwithstanding that it required a managed re-location of the UK Border Force compound) given that other sites broadly between the landfall location and the grid connection were also potentially available that could shorten the onshore cable alignment (substation siting options); and
  - whether a case had been made for CA for land additional to the substation site to ensure that the needs of UK Border Force and other arrangements in respect of Ramac tenants could be made (additional land).
- 10.6.7. The Applicant confirmed its oral submissions in response to issues raised by the ExA and Ramac about the justification for CA in Zone 2 at CAH1 [[REP3-012](#)] [[REP3-021](#)] and CAH2 [[REP5-020](#)].
- 10.6.8. In addition to these matters, the Applicant also set out a case for remaining CA powers in Zones 1 and 3, in summary that, having considered a range of landfall locations [[REP7-027](#)] [[REP3-021](#)] [[REP5-020](#)], the Pegwell Bay landfall was the preferred location (the landfall location), and that by whatever means and accommodating use and development currently and prospectively located there, a grid connection at Richborough Energy Park had to be made. This last point justified the retention of three alignment options within Zone 3 (the connection location: Richborough Energy Park).

### **Substation size**

- 10.6.9. The underlying design assumptions used in calculating the land requirement for the substation are set out in the Project Description (Onshore) [[APP-057](#)].
- 10.6.10. The Applicant made clear that it was seeking to retain the option of using either or a combination of air insulated (AIS) or gas insulated (GIS) switchgear. Whilst it acknowledged that in principle a GIS installation could require less land than an AIS installation, it observed that the land requirement for an OWF substation is largely driven by the need for a range of outdoor installations, required regardless of AIS or GIS technology choice, by the need to provide construction and operational access and by the need appropriate containment and buffer space for fire hazardous and noisy componentry ([[REP3-012](#)] at section 2). On that basis, wherever a substation was to be located, the Applicant maintained that it required in the order of 6ha of land to ensure delivery of an operational substation of either technology.

## Substation siting options

- 10.6.11. The Applicant made clear that it had considered options for siting its onshore substation within or adjacent to Richborough Energy Park (Zone 3). Within the Richborough Energy Park, it faced siting constraints due to the existing and emerging land requirements of other energy businesses (NLL, NGET, UKPN and Thanet OFTO Ltd (the connection provider for the existing TOWF). The effect of these operations were argued to be such as to preclude the provision of an approximately 6ha substation site within the Richborough Energy Park ([[REP3-012](#)] at section 3.1).
- 10.6.12. The Applicant has also viewed land to the north east of the Richborough Energy Park but discounted this due to potential loss of land, or disturbance to, the Sandwich Bay to Hacklinge Marshes SSSI (a matter identified in EIA scoping [[APP-130](#)] at paragraph 3.168 as requiring the documentation of mitigation in the ES if that option were to proceed).
- 10.6.13. In relation to other substation siting options, these were considered in the Site Selection and Alternatives document [[APP-040](#)], taking account of other constraint factors (Ground Conditions, Land Use and Flood Risk [[APP-062](#)]). The Applicant's general conclusion was that land in Zone 2 other than the proposed substation site and occupied by the Baypoint Club, BCA Fleet Solutions and at South Richborough Port was not suitable to site a substation<sup>213</sup>. The primary constraints as identified by the Applicant can be summarised as follows ([[REP3-012](#)] at sections 3.2-3).

### *Land at the Baypoint Club*

- *'Proximity to Noise Sensitive Receptors at the south end of Ebbsfleet Lane. [noise receptor LT4]. The small settlement present at the south of Ebbsfleet Lane would be subject to long term effects for the operational lifetime of the project.*
- *'The Bay Point Club itself is an important recreational facility, which therefore has associated community value.*
- *'Bay Point Club laying fields [sic] are in a flood zone (Zone 3) [...]. Any substation development would therefore need to be on raised land in an area that is subject to flood risk leading to greater land area being required, increasing traffic movements associated with construction and additional visual impacts.*
- *'[The Baypoint Club is] immediately adjacent to the Stonelees Nature Reserve to the north (a National Nature Reserve and International Special Protected Area (SPA)).*
- *'[The Baypoint Club is] immediately adjacent to an [sic] SAC and SPA to the east.'*

### *Land at BCA Fleet Solutions*

- *'The area immediately to the North of the [proposed] substation location is and represents office blocks, workshops, warehousing, workshops and storage buildings and car parking areas.*

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<sup>213</sup> The disposition of these sites is shown on Figure 10.2 above.

- *'Demolition of buildings in close proximity to potential bat roosts between the BCA land and Bay Point Club is considered to be a hindrance to development of this land parcel.'*
- *'Site currently in active use used by British Car Auctions.'*

*Land at South Richborough Port*

- *'The area in the south also takes the substation to <400m from a noise sensitive receptor (NSR) at 'Stonar Cottage'. The proximity to this NSR may result in long term significant effects for the operational lifetime of the project.'*
- *'Traffic and transport constraints relating to peak construction movements (e.g. for concrete pours).'*
- *'Any movement of the proposed substation location further south within the Ramac land ownership would increase the length of the project export cable and as such would increase both cost, but more importantly the associated easement and potential for sterilisation of a greater land area.'*
- *'As the land narrows at this point, the design of the substation would be much harder to optimise [...] and therefore could lead to greater land take than further north.'*

10.6.14. The Applicant concluded on the basis of these constraints, that the existing UK Border Force secure compound was the least constrained and the preferred location for the substation.

**Additional land (Zone 2)**

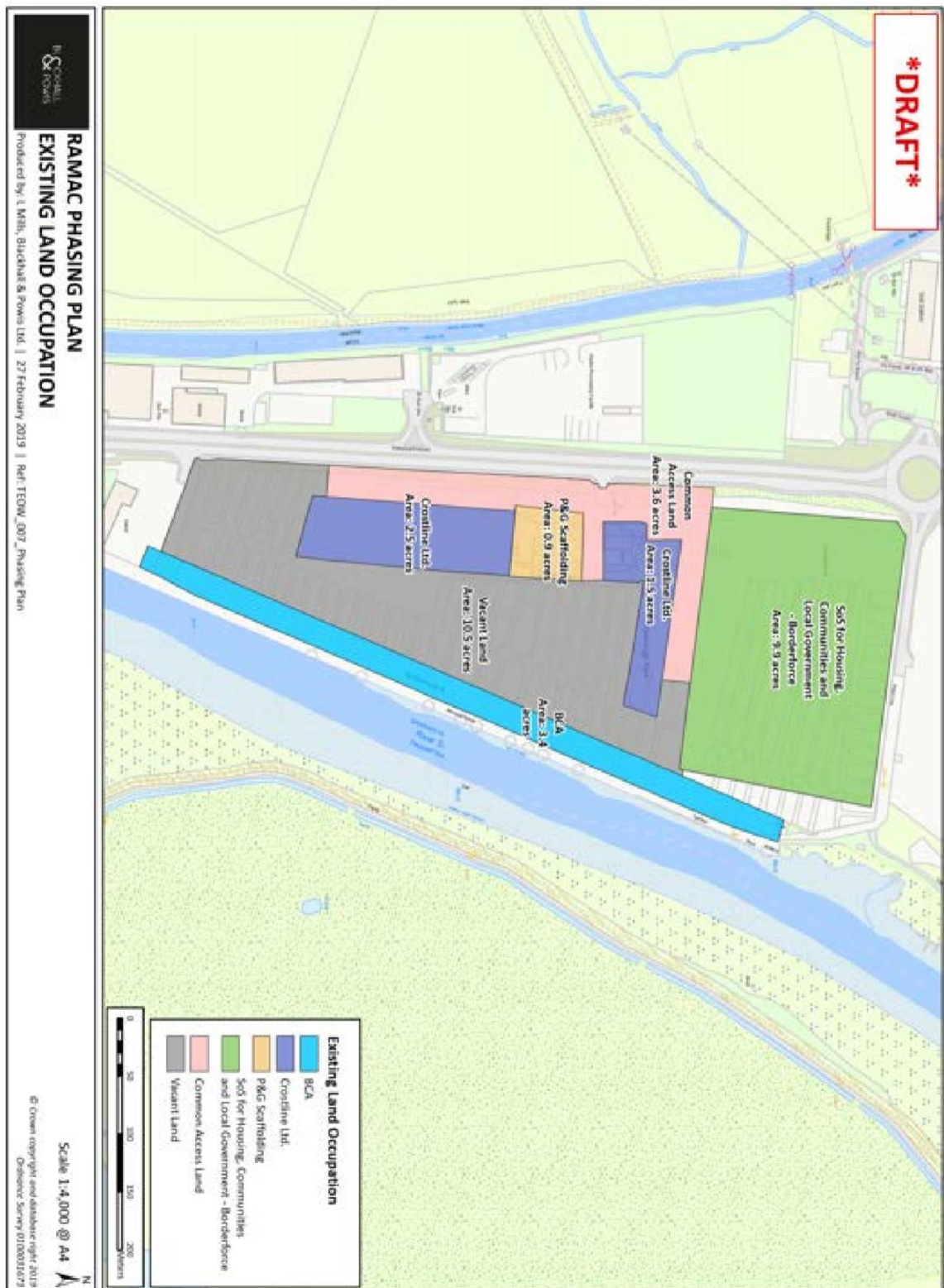
10.6.15. The UK Border Force has an ongoing operational need for a secure compound. If its existing compound is to be subject to CA, seized vehicles and other evidence secured in the existing compound would need to be relocated with great care to an equivalently secure location in order to maintain the integrity of ongoing investigations, enforcement and related legal processes. As a Crown entity (through MoJ), the absence of a secured operational solution for the UK Border Force could provide a basis for the withholding of Crown consent.

10.6.16. On this basis, the Applicant took the view that the acquisition of a substantial body of additional land over that operationally required for the substation was necessary and justified to facilitate the Proposed Development, by enabling the construction of a replacement secure compound for the UK Border Force and a reconfiguration of other short lease and licence occupiers (including Crostline Ltd) within the remaining South Richborough port landholding in the Ramac freehold. The staged process whereby this would occur is illustrated in Figures 10.3 – 5 below. Figure 10.3 shows the existing pattern of land occupation. Figure 10.4 shows the pattern sought by the Applicant during the construction period (including TP). Figure 10.5 shows the enduring pattern of land occupation that the Applicant sought to establish by agreement, but through the exercise of CA powers if agreement could not be reached.

10.6.17. The Applicant intended to conclude a reconfiguration agreement between the relevant parties including Ramac and MoJ by March 2019 ([[REP3-012](#)] at sections 5.1-3) that would result in this outcome being achieved



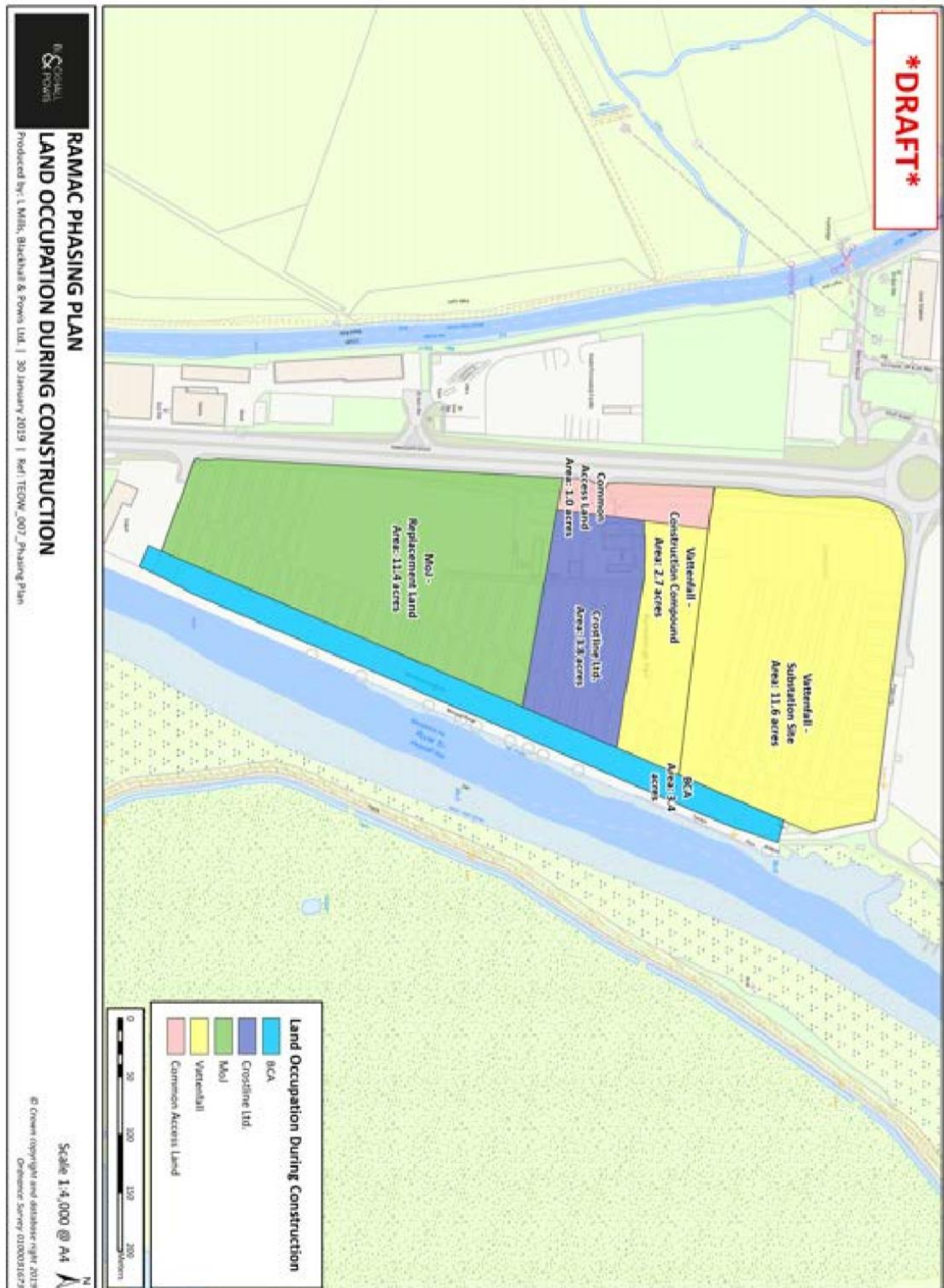
Figure 10.3: Ramac Phasing Plan: Existing Land Occupation<sup>214 215</sup>



<sup>214</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>215</sup> Applicant's Oral Case at CAH2 (page 6 – first figure) [[REP5-020](#)].

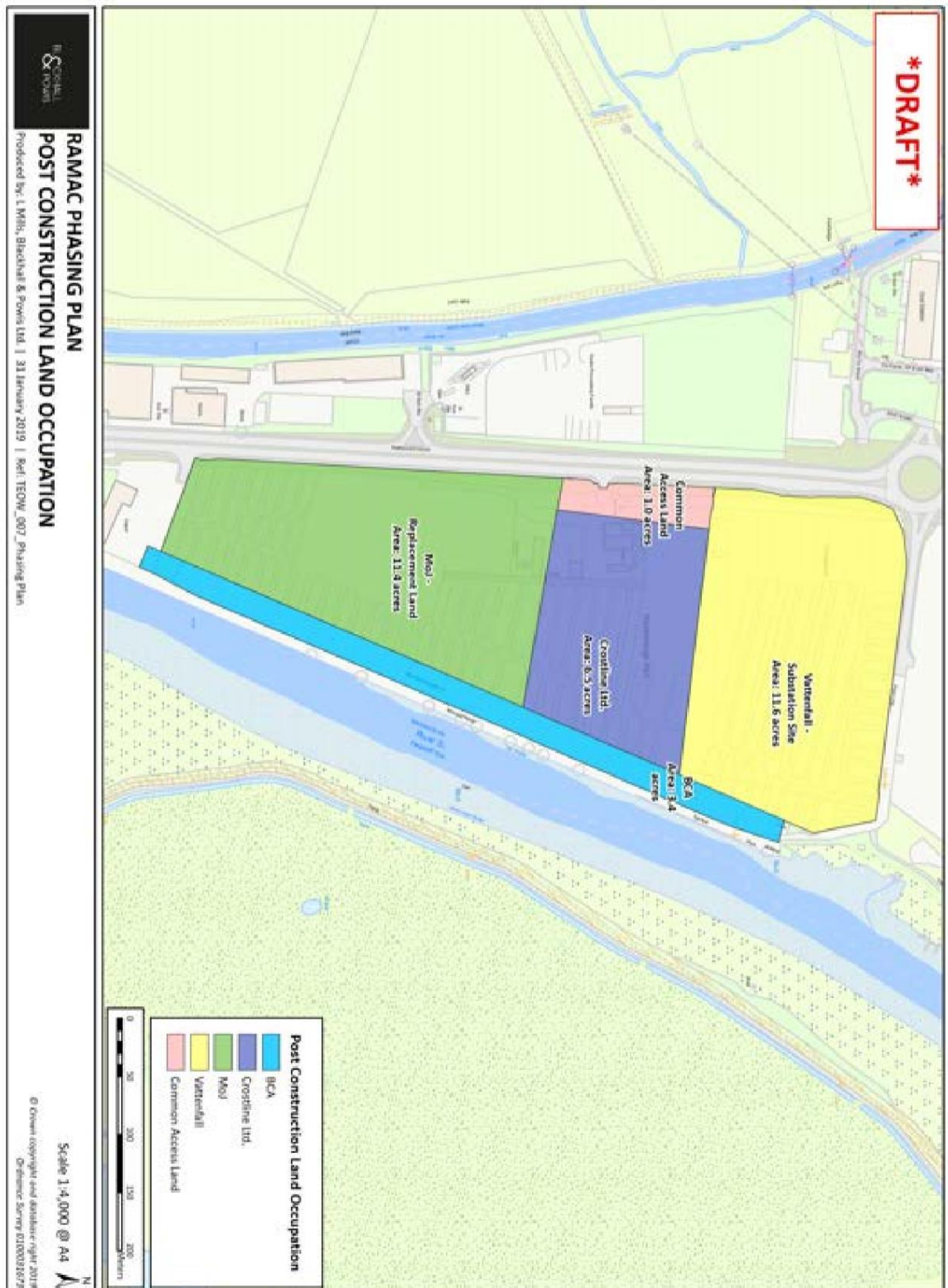
**Figure 10.4: Ramac Phasing Plan: Proposed Land Occupation During Construction**<sup>216 217</sup>



<sup>216</sup> Reproduced from Applicant's documentation: do not scale. Refer to original.

<sup>217</sup> Applicant's Oral Case at CAH2 (page 6 – second figure) [[REP5-020](#)].

**Figure 10.5: Ramac Phasing Plan: Proposed Post Construction Land Occupation**<sup>218 219</sup>



<sup>218</sup> Reproduced from Applicant’s documentation: do not scale. Refer to original.  
<sup>219</sup> Applicant’s Oral Case at CAH2 (page 7) [[REP5-020](#)].

by voluntary settlement. CA powers were sought as a 'backstop'. However, Ramac objected strongly to the underlying CA case and the reconfiguration agreement was not concluded during the Examination.

### **The landfall location (Zone 1)**

- 10.6.18. The Applicant noted the general acceptance of the landfall location and the passage of the onshore cable alignment through Zone 1 by its primary landowner KCC, whilst also noting the sustained objection of the National Trust (foreshore freeholder) and KWT (leaseholder/ land manager) to the acquisition of inalienable land. This matter is addressed further below.

### **The connection location (Zone 3)**

- 10.6.19. The Applicant noted the general acceptance of the proposed connection point in Richborough Energy Park and the need to retain optionality for the passage of the cable alignment through that land by landowners and statutory undertakers. This matter is also addressed further below.

## **INDIVIDUAL CA AND TP OBJECTIONS AND ISSUES**

- 10.6.20. The Proposed Development was subject to the following general objections to CA and/or TP of land or rights sustained to the end of the Examination period:
- Ramac (the extensive freeholder of land in Zone 2 and landlord of the UK Border Force (MoJ) and Crostline, heard orally); and
  - Crostline Ltd. (a tenant of Ramac heard orally);

These objections are reported on below.

- 10.6.21. In ExQ1.3.6 (and Annex A) [[PD-012](#)] the ExA established a process under which the Applicant maintained a record of general objections to CA and/or TP and to progress in negotiations with those, deadline by deadline throughout the Examination. The most recent responses from the Applicant were submitted at D7 [[REP7-020](#)] and the ExA has reviewed the positions set out here against WRs from relevant statutory undertakers. These positions are summarised below.
- 10.6.22. Statutory undertakers' positions are considered together with matters arising as a consequence of their protection under PA2008 ss 127 and 138 below, from paragraph 10.6.61 and their representations were in any case withdrawn before the end of the Examination. The position of the National Trust is considered together with matters arising as a consequence of its protection under PA2008 s130, from paragraph 10.6.66 below.
- 10.6.23. Whilst it was heard orally on CA, TP and matters pertaining to land rights more broadly, tCE was not an objector. Its position and the position of the Crown including UK Border Force (MoJ) is considered from paragraph 10.6.71 below.

<b>Name:</b>	Ramac	<a href="#">[RR-059]</a>
<b>Location:</b>	Freeholder at Port of Richborough, Kent, location of proposed substation and replacement land for landlord of UK Border Force and Crostline Ltd (Zone 2).	
<b>Interests:</b>	<b>Plots</b>	
Freehold Land	CA of freehold land in respect of Plots shown on the Land Plans and in the BoR as 01/80,01/85, 01/105, 01/110, 01/115, 02/05, 02/10, 02/15, 02/20, 02/25, 02/30, 02/35, 02/40, 02/55, 02/60, 02/61, 02/65, 02/70, 02/75 and 02/85 <a href="#">[REP2-011]</a> <a href="#">[REP2-028]</a> .	
<b>Status summary:</b>	The Applicant indicated that heads of terms for an option agreement had been negotiated and formal withdrawal was expected <a href="#">[REP7-020]</a> . However, the objection remains unwithdrawn.	

### Case for Ramac

- 10.6.24. The case for Ramac has three main elements [\[REP5-055\]](#):
- the Applicant has not demonstrated a need for the extent of the proposed substation site (substation size);
  - the Applicant has not chosen the best substation site – other options exist that would be more efficient and/ or reduce the length of the onshore cable corridor: the decision to exclude these options has been taken with insufficient investigation and is not well justified (substation siting options); and
  - as a consequence of selecting a substation site occupied by a Crown entity, the Applicant now seeks to acquire more land than it needs operationally (over-acquisition).
- 10.6.25. In relation to substation size, Ramac called evidence at CAH2 seeking to demonstrate that the extent of land sought for the substation was too great. The decision to maintain the option for AIS technology built in a requirement for more land than was strictly required. If a commitment was made to GIS technology, the substation could be accommodated on a smaller site and a number of additional siting options would then become feasible. Ramac remained of the view (informed by its own technical expert evidence) that selecting GIS could reduce land take in the region of 75%.
- 10.6.26. That notwithstanding, Ramac also considered that the Applicant had not conclusively demonstrated that it had selected the best substation site. It had not demonstrated in detailed terms that a substation could not be accommodated within Richborough Energy Park. Ramac does not agree with the Applicant's position that the selection of the UK Border Force compound site for the substation has the effect of minimising the impact of the Proposed Development on Ramac. The use of the UK Border Force

land as the substation site had already resulted in an onshore cable alignment that was longer than it needed to be, passing around the perimeters of the Baypoint Club and BCA land, describing what amounted to almost three sides of a rectangle in approaching the connection point. Ramac did not consider that the Applicant had demonstrated that it could not use a shorter, more direct cable corridor and site the substation on the Baypoint Club or BCA land. (It should be noted that Ramac is also the freeholder of both the Baypoint club and BCA sites).

- 10.6.27. Technical constraints on the location of a substation on the Baypoint Club or BCA land due to adverse impacts on noise receptors at Ebbsfleet were disputed by Ramac on the basis that the Applicant's position was an assertion: there was no detailed noise assessment, or consideration of ways in which (including the selection of GIS technology) noise effects of a more proximate substation on this receptor could be mitigated.
- 10.6.28. To the extent that the Applicant had asserted flood risk as a reason not to locate a substation on the Baypoint Club land had not been supported by a detailed flood risk assessment or analysis of the remaining land available outside Flood Zone 3.
- 10.6.29. Adverse effects on the SPA/SAC and on a 'potential' bat roost due to the location of a substation on the Baypoint Club land had not been adequately studied in terms of the likelihood of harms or the consideration of mitigation.
- 10.6.30. The Applicant had not provided sufficient evidence of its contention that a substation could not be accommodated cost-effectively to the south of land at South Richborough Port (the portion of the Ramac land that is currently vacant).
- 10.6.31. In order to provide a backstop in circumstances where a voluntary agreement to acquire the UK Border Force Compound and to redistribute uses and leases on the South Port Richborough site could not be reached, the Applicant had made a CA request for substantially more land than it required operationally. In circumstances where alternatives had not been excluded, this amounted to an over-acquisition.

### **Case for the Applicant**

- 10.6.32. The case for the Applicant in respect of CA for the Ramac land is set out in paragraphs 10.6.15 – 17 above.

### **ExA Response**

- 10.6.33. The ExA considers that the CA tests are not met on the Zone 2 Ramac land.
- 10.6.34. In relation to substation size and the choice of GIS or AIS technology, the ExA notes the general potential for the use of GIS technology to reduce the land required for substation development. Whilst Ramac's expert evidence concluded that up to a 75% reduction in land requirement could be achieved, the ExA does not consider this order of

reduction to be fully or reasonably achievable by an OWF developer. In reaching this position, the ExA notes that there are additional drivers of land requirement which, whilst the Applicant did not evidence them clearly, mean that it is not sufficient to compare the land requirement for an AIS substation with that for a GIS substation alone: additional allowances for installations necessary to manage current from an OWF would add to the land requirement for a GIS substation and limit the reduction in land area that could be expected.

- 10.6.35. The ExA notes more broadly that a substantial number of OWF developments have been granted Development Consent with CA of land for onshore substations that preserves optionality for the construction of either an AIS or a GIS substation. The preservation of this optionality appears to be in the public interest, as adopting the best available technology at the point of construction is a means whereby the OWF undertaker and or a subsequent OFTO control the costs of the cable alignment and grid connection. For these reasons, the ExA considers that the Applicant has made a sufficient case for the extent of land required for the substation to support CA.
- 10.6.36. Turning to the broader issue however of whether the Applicant has demonstrated that the proposed substation site is the best site and that alternative sites can and should be excluded, the ExA here agrees with Ramac that it has not done so.
- 10.6.37. The ExA commences its consideration of this matter by observing that it accepts the Applicant's case that there is not a potential substation site immediately available within the Richborough Energy Park. Whilst the precise nature of all development proposed and underway there has not been demonstrated by the Applicant, the ExA accepts (having carried out a detailed ASI within the site) that it is a highly constrained site. It is also a site offering transmission and distribution system connections to a number of users and there is public benefit in maintaining and maximising that capability. Analysis below notes that other statutory undertakers and utility providers using Richborough Energy Park are content with the passage of the cable alignment through the site as currently proposed. This suggests that the Applicant's decision to locate the substation outside the Richborough Energy Park was an appropriate and on balance well-justified decision.
- 10.6.38. Moving beyond the Richborough Energy Park to land to the north, the ExA notes that whilst the delivery of a substation here was argued by the Applicant to entail harm to the Sandwich Bay to Hacklinge Marshes SSSI, the Applicant took a decision not to provide detailed comparative evidence about that land, or to consider design options or mitigations which arguably could have reduced that harm. The Applicant does not have evidence to hand to demonstrate that the harms occasioned by the development of that land would outweigh the different harms occasioned by the development of the UK Border Force site. The ExA is not clear that there would have been any real impediment to substation delivery on this site or how the balance of benefit of developing this site as against the UK Border Force Site might have been assessed. In terms of

paragraph 8 of the DCLG guidance, the Applicant has not demonstrated that *'all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.'*

- 10.6.39. Turning then to other land in the freehold ownership of Ramac, the ExA agrees with Ramac that the Applicant has not demonstrated that noise, flood, natural environment impact or access considerations on the Baypoint Club land mean that a feasible substation design could not be accommodated on that land with appropriate mitigation in place. There are apparent constraints. However, the Applicant has not provided any more than a limited appraisal of them: which in circumstances where it is seeking to subject land to CA and these sites are being offered as prospective alternative sites by the freeholder, does not strike the ExA as sufficient.
- 10.6.40. Given the private operation of the Baypoint Club, the ExA does not accept that it represents a community asset as such. The Baypoint Club is noted in paragraph 3.10.7 above as being subject to a development plan allocation as 'protected open space' (raised in the DCC LIR [[REP1-091](#)]) although in the context of NSIP development subject to PA2008, the ExA notes that such a policy could not be taken as a barrier to CA: a full appraisal of site options should evaluate that factor alongside others.
- 10.6.41. The ExA notes that a substation located on the Baypoint Club land could offer the potential to shorten onshore cable alignment between the landfall and Richborough Energy Park. Furthermore, because this land is not burdened with a Crown tenant, its acquisition for a substation would not require the acquisition of additional land that to enable the formation of replacement facilities or the redistribution of occupancies as is currently required for the land to the south. There is potential for the Applicant to reduce the extent of land subject to CA as a consequence, and the Applicant has not clearly demonstrated why that potential should be discounted.
- 10.6.42. The ExA equally agrees with Ramac that the Applicant has not demonstrated that land currently occupied by BCA Fleet Solutions could not host a substation. The ExA agrees with Ramac that the Applicant has not demonstrated that harm to bats represents a valid reason for not selecting this land or that such harm, if demonstrated, could not be adequately mitigated. The ExA agrees with the Applicant that this land is more intensely used for an established business purpose than some of the land to the south, but the presence of an active business use alone is not a reason in principle not to seek CA over land. However, as with the Baypoint Club land, the use of this land to site a substation has the potential to enable the Applicant to significantly reduce the extent of land subject to CA because replacement facilities and redistribution would not be required. It also offers the unexcluded potential to shorten the cable alignment. The Applicant has not demonstrated why these potentials should be discounted.
- 10.6.43. Turning to land at the far southern extent of the Ramac holding (South Richborough Port) the ExA agrees broadly with the Applicant that the use



of this land to site the substation would increase the length of the cable alignment, whilst also providing a narrow and irregularly shaped parcel, that would be less easy in principle to develop for the intended use. Without further data, the ExA does not agree that proximity to Stonar Cottage represents a noise constraint on this location as potential mitigations could be available. Nor without further evidence does it agree that traffic and transport constraints make the site less than feasibly developable.

- 10.6.44. Taking these considerations together, it appears to the ExA that the case for the currently proposed substation site and for the extent of CA overall is not made out. Turning to the tests in PA2008 s122, the extent of the land sought is such that it is required for more than the development to which the development consent relates. More land is being sought than the development reasonably requires. Whilst the Applicant has argued that the additional land is required to facilitate the proposed development by enabling the replacement of the UK Border Force compound and the redistribution of other uses to this end, this can only be agreed to be the case where it is clear that options that do not require additional land for such facilitation have been reasonably excluded.
- 10.6.45. For reasons recorded above, the ExA does not agree that options on the Baypoint Club or BCA Fleet Solutions sites that could have avoided additional CA for facilitation have been reasonably excluded. In this respect, the ExA turns to paragraph 8 of the DCLG CA Guidance<sup>220</sup>, and finds that the Applicant has not demonstrated that *'all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.'* The ExA takes this guidance to include exploration of all reasonable alternatives to a larger extent of CA, where potential alternatives exist that could enable a smaller extent of CA.
- 10.6.46. It should be specifically noted that it was no part of the Applicant's case that its proposal to CA the currently proposed UK Border Force compound together with additional land to facilitate its replacement was being pursued because this would entail less cost to the Applicant than possible alternatives, including the CA of the Baypoint Club or the BCA Fleet Solutions land. On the basis that this was not identified as a consideration, the ExA has not evaluated it. It is recorded here to ensure transparency about the factors that were and were not available to be considered.
- 10.6.47. Although the CA of additional land over is required primarily to replace the UK Border Force compound, this is not replacement land that is to be given in exchange under ss131 or 132 of PA2008.
- 10.6.48. Because in these circumstances the ExA finds that the Applicant cannot justify the extent of the proposed CA acquisition within Zone 2, it follows that there could be ways in which the public benefits of the Proposed Development could be provided entailing less extensive private loss

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<sup>220</sup> [Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land](#), DCLG, September 2013

and/or less compromise of private land than is currently proposed. There could be ways in which the extent of land acquisition could be reduced and the length of the proposed cable alignment could also be reduced. Reference to Figures 10.1 and 10.2 show the potential for a notional cable alignment to a substation located on either the Baypoint club land or the BCA Fleet Solutions land that could eliminate the need for that element of the cable alignment which currently bypasses the majority of those sites to the east and south.

- 10.6.49. Placing all of these considerations into the balance, the ExA takes the view that public benefit would not demonstrably outweigh private loss if the CA proposed in Zone 2 was to proceed. On that basis, there is not a compelling case in the public interest for the acquisition of land in Zone 2 on the basis that the UK Border Force compound is to be used as the substation site.
- 10.6.50. If the SoS is not minded to make the Order for reasons set out in Chapter 9 above, then these considerations will not be relevant, as the SoS will already have determined not to grant CA and TP powers for an over-arching reason.
- 10.6.51. However, if the SoS is minded to make the Order, then consideration must be given to the question of whether to confirm CA and TP powers over the Ramac land. In the mind of the ExA, the response to this question is that such powers over this land should not be confirmed, for the following reasons:
- in terms of PA2008 s122(2), the statutory condition is not met because the extent of land and rights sought for the substation site for the cable corridor approaching it from the landfall, and for the provision of replacement land for the UK Border Force compound to be relocated from the substation site is greater than that required for the development or to reasonably facilitate or be incidental to the development; and
  - in terms of PA2008 s122(3), the statutory condition is not met because there is not a compelling case in the public interest for the full extent of the proposed Ramac Zone 2 land to be acquired compulsorily. This is because whilst the Proposed Development is to connect a renewable energy NSIP with a clear need case and policy support set out in NPS EN-1 and EN-3 to the grid, it appears to the ExA that there are unexcluded potential siting and routing options to make such a connection that could use less land and so take less land and burden less land with new rights in favour of the undertaker. By taking less land and/ or rights than those sought, it would be possible to reduce the extent and effect of disruption to existing land holdings and businesses whilst still delivering the same project outcome.
  - The ExA has reached this conclusion because it remains unconvinced by the case put before it that it is necessary for the undertaker to become the freeholder / landlord of both the existing and the proposed UK Border Force compound and additional land in South Richborough Port. The Applicant has proposed a substantial and unnecessary appropriation of Ramac as freeholder, in order to address

the needs of UK Border Force, when alternative and apparently lesser and more efficient options were offered to it by the freeholder but dismissed with insufficiently clear reasoning.

- An alternative substation location avoiding the UK Border Force compound could have avoided this outcome. This in turn could have reduced the length of the cable alignment and reduced the extent of CA land-take.
- Alternatively, even if the Applicant with further diligence and evidence was able to demonstrate that the currently proposed substation site is the best location for this facility and that all of the land proposed to be taken is needed, there would be other means to reaccommodate the UK Border Force compound that did not require the Applicant / undertaker to become the freeholder / landlord of this facility. In reaching this conclusion, the ExA notes that it was the intention of the Applicant to enter into a tripartite commercial agreement with Ramac and UK Border Force that would have obviated the need for CA of replacement land for the compound [REP6-067]. Although that agreement was not concluded, it is by no means demonstrated that it or an alternative commercial agreement could not deliver the outcome sought by the Applicant or that a long term CA of land to host the UK Border Force is required or even desirable.
- The Applicant is not able to demonstrate that the statutory condition and the relevant tests in the DCLG CA Guidance are met unless it can be clear that the full extent of the proposed CA in this location is required and that the benefits of the Proposed Development cannot be realised in another way with less adverse impacts on the interests of landowners.

10.6.52. It should be noted that if the Zone 2 CA and TP request were not to be granted in circumstances where the remainder of the Proposed Development did proceed, in the ExA's view this would not prevent the effective delivery of the Proposed Development. The undertaker may still negotiate for commercial agreements to access land or promote another CA or compulsory purchase process enabling the completion of a cable corridor from the landfall to the grid connection point in Richborough Energy Park using a more direct and/ or more clearly justified route and taking less land. The Zone 1 and Zone 3 elements of the CA and TP proposal would still be in place as a starting point for this.

10.6.53. If the SoS agrees with this recommendation, then Ramac is a successful objector<sup>221</sup>.

### **ExA Conclusion**

10.6.54. CA powers over land freeheld by Ramac should not be granted.

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<sup>221</sup> [Awards of costs: examinations of applications for development consent orders](#), DCLG Guidance, July 2013 at Part D from paragraph 3 provides that a successful objector to a compulsory acquisition request is eligible for an award of costs, consequent on their sustained objection to the request.

<b>Name:</b>	Crosthline Ltd	<a href="#">[REP1-105]</a>
<b>Location:</b>	Tenant of Ramac at Port of Richborough, Kent affected by the proposed relocation of the UK Border Force compound (Zone 2).	
<b>Interests:</b>	<b>Plots</b>	
Leasehold	Permanent CA of land in respect of Plots shown on the Land Plans and in the BoR as 02/65, 02/70, 02/75 and 02/85, <a href="#">[REP2-011]</a> <a href="#">[REP2-028]</a> .	
<b>Status summary:</b>	Outstanding objection <a href="#">[REP7-020]</a> .	

### **Case for Crosthline**

- 10.6.55. Crosthline is a tenant of Ramac, affected by the proposal to acquire land that would not be operationally required, to host a replacement compound for UK Border Force and enable the redistribution of other uses and tenancies within the Ramac Land. Crosthline wishes to avoid the loss of or disruption to its premises, currently used as an office and vehicle export storage yard.

### **Case for the Applicant**

- 10.6.56. The Applicant's position is that the proposed CA need not be adverse to the interests of Crosthline, as its proposed site distribution (see Figures 10.3, 10.4 and 10.5 above) could enable Crosthline to continue to occupy its current office premises through and post construction. A consolidated land area would enable it to continue its export business on different land to present, but more closely associated with its office building than its existing lease areas.

### **ExA Response**

- 10.6.57. The physical solution proposed by the Applicant for the Crosthline tenancy is not an unreasonable one. However, in circumstances where the ExA has found that the CA of Ramac land in Zone 2 to host a replacement compound for UK Border Force does not meet the relevant tests in statute and guidance, it also finds for the same reasons that there is no need for CA of the land currently occupied by Crosthline.
- 10.6.58. If the SoS agrees with this recommendation, then Crosthline is also a successful objector<sup>143</sup>.

### **ExA Conclusion**

- 10.6.59. CA powers over land leased from Ramac by Crosthline Ltd should not be granted.

## **SPECIAL LAND AND RIGHTS PROVISIONS**

- 10.6.60. The Proposed Development affects a number of plots and bodies with relevant land or rights protections provided under PA2008 ss127 and 138

(statutory undertakers), s130 (National Trust inalienable land) and s132 (open space). These are reported on fully below, noting that whilst some bodies did not formally object and others withdrew their objection, it is necessary for the ExA to assure itself and the SoS that all relevant special land and rights provisions have been addressed.

**Statutory Undertakers (PA2008 ss127 and 138)**

10.6.61. The Proposed Development affects the land, rights and/or apparatus of the following statutory undertakers:

- NGET (electricity transmission system operator);
- NGG (gas transmission system operator);
- NLL (international electricity transmission/ system interconnector operator);
- Thanet OFTO (offshore transmission owner for the existing Thanet OWF);
- SW (water supply and foul water drainage operator);
- UKPN/ SPN (electricity distribution system operator);
- BT (telecommunications code operator); and
- Scotia Gas Networks (gas distribution operator).

10.6.62. In ExQ1.3.7 and 8 [PD-012] the ExA established a process under which the Applicant maintained a record of statutory undertaker interfaces with and objections to the Proposed Development. Progress in negotiations with those were logged, deadline by deadline, throughout the Examination. The most recent responses from the Applicant on s127 (land and rights matters) [REP7-023] and s138 (apparatus matters) [REP7-024] were submitted at D7. The ExA has reviewed the positions set out there against WRs from the statutory undertakers. The combined positions at the end of the Examination are summarised in tables below.

<b>Name:</b>	NGET	[RR-027]
<b>Function(s) and Location(s):</b>	Electricity transmission system operator and grid connection point in Richborough Energy Park	
<b>Interests:</b>	<b>Plots</b>	
Rights (s127(5))	CA of access, maintenance and other rights shown by sheet 2 on the land plans and by plots 02/120, 02/121, 02/122, 02/123 and 02/130 in the BoR. (A leasehold interest at Plot 02/130 is also sought). [REP2-011], [REP2-028].	
Apparatus (s138)	None.	
<b>Status summary:</b>	The Applicant seeks a grid connection to NGET’s transmission system at Richborough. The Applicant records agreement on protective provisions (included in the dDCO [REP8-013]) and a commercial side agreement (unseen) on 23 May 2019.	

NGET withdrew its representation on 23 May 2019 [[AS-018](#)] (clarified and confirmed in [[REP6A-017](#)]).

The NGET representation has been withdrawn (s127(1)(b)) and so the SoS has no further considerations under s127(5) and (6). There is no relevant apparatus (s138).

<b>Name:</b>	NGG	[ <a href="#">RR-027</a> ]
<b>Function(s) and Location(s):</b>	Gas transmission system operator	
<b>Interests:</b>	<b>Plots</b>	
Rights (s127(5))	None specifically identified.	
Apparatus (s138)	None specifically identified.	
<b>Status summary:</b>	<p>The RR from NG identifies that it is from NGG as well as NGET. All subsequent documentation in the Examination relates solely to the interests of NGET, with no reference made to NGG. NG (the parent company) withdrew its representations on 23 May 2019 [<a href="#">AS-018</a>] (clarified and confirmed in [<a href="#">REP6A-017</a>]).</p> <p>Whilst the NG representation has been withdrawn, the absence of reference to NGG leaves a minor but unexcluded possibility that the Proposed Development might affect the land, rights or apparatus of NGG and/ or that NGG might not consider its representation to have been withdrawn (see further below).</p>	

<b>Name:</b>	NLL	[ <a href="#">RR-010</a> ]
<b>Function(s) and Location(s):</b>	Electricity transmission system international interconnector operator with closely adjacent cable and grid connection infrastructure	
<b>Interests:</b>	<b>Plots</b>	
Rights (s127(5))	Rights of access, maintenance and other rights shown on sheets 0, 1 and 2 of the Land Plans, over plots 00/01, 01/15, 01/20, 01/25, 01/35, 01/60, 01/80, 01/85, 01/125, 02/120, 02/121, 02/122, 02/123 and 02/130 in the BoR.	
	Rights of access shown on sheets 0 and 1 of the Land Plans, over plots 00/05, 00/10, 01/01,	

	01/02, 01/05, 01/06, 01/10, 01/11, 01/30, 01/40, 01/50, 01/65, 01/75 in the BoR.
	Rights shown on sheet 1 of the Land Plans, over plot 01/70 in the BoR.
	Rights of access, maintenance, unilateral notice and other rights shown on sheet 1 of the Land Plans and by plots 01/90, 01/105 in the BoR [ <a href="#">REP2-011</a> ], [ <a href="#">REP2-028</a> ].
Apparatus (s138)	None.
<b>Status summary:</b>	The proposed onshore cable alignment runs adjacent to and accommodates NLL cable and connection infrastructure.
	The Applicant records a commercial side agreement (unseen). NLL's satisfaction is clear as it withdrew its representations on 5 June 2019 [ <a href="#">AS-019</a> ].
	The NLL representation has been withdrawn (s127(1)(b)) and so the SoS has no further considerations under s127(5) and (6). There is no relevant apparatus (s138).

<b>Name:</b>	Thanet OFTO
<b>Function(s) and Location(s):</b>	Offshore transmission owner servicing the operational Thanet OWF, with closely adjacent cable and connection infrastructure
<b>Interests:</b>	<b>Plots</b>
Rights (s127(5))	Rights of access, maintenance and other rights shown on sheets 0 and 2 of the Land Plans, over plots 00/01, 02/100, 02/115 and 02/130 in the BoR.
	Rights of access, maintenance, unilateral notice and other rights shown by sheet 2 of the Land Plans, over plots 02/120, 02/121, 02/122, 02/123 in the BoR [ <a href="#">REP2-011</a> ], [ <a href="#">REP2-028</a> ].
Apparatus (s138)	None.
<b>Status summary:</b>	The proposed onshore cable alignment runs adjacent to and accommodates Thanet OFTO cable and connection infrastructure.
	The Applicant records a separate commercial side agreement is in progress (unseen). However,

Thanet OFTO is not an IP and did not participate in the Examination.

The Thanet OFTO did not make a representation (s127(1)(b)) and so the SoS has no further considerations under s127(5) and (6). There is no relevant apparatus (s138).

<b>Name:</b>	SW <a href="#">[AS-015]</a>
<b>Function(s) and Location(s):</b>	Water supply and foul drainage undertaker servicing the local area
<b>Interests:</b>	<b>Plots</b>
Rights (s127(5))	Rights of access, maintenance and other rights shown on sheets 1 and 2 of the Land Plans, over plots 01/40, 01/50, 02/120, 02/121, 02/122, 02/123 and 02/130 in the BoR <a href="#">[REP2-011]</a> , <a href="#">[REP2-028]</a> .
Apparatus (s138)	None.
<b>Status summary:</b>	<p>The proposed onshore cable alignment crosses SW pipelines in a number of locations.</p> <p>The Applicant records agreement on protective provisions (included in the dDCO <a href="#">[REP8-013]</a>) and that a separate commercial side agreement has been concluded (unseen). SW withdrew its representations on 6 June 2019 <a href="#">[AS-020]</a>.</p> <p>SW has withdrawn its representation (s127(1)(b)) and so the SoS has no further considerations under s127(5) and (6). There is no relevant apparatus (s138).</p>

<b>Name:</b>	UKPN/ SPN <a href="#">[RR-012]</a>
<b>Function(s) and Location(s):</b>	Electricity distribution network undertaker servicing the local area and connecting to the grid at Richborough Energy Park
<b>Interests:</b>	<b>Plots</b>
Rights (s127(5))	Rights of access, maintenance and other rights shown on sheets 1 and 2 of the Land Plans, over Plots 01/40, 01/50, 01/115, 01/120, 02/20, 02/35, 02/40, 02/75, 02/80, 02/95, 02/100, 02/105, 02/110, 02/115, 02/120, 02/121, 02/122, 02/123 and 02/130 in the BoR



	Rights shown on sheet 2 of the Land Plans, over plots 02/30, 02/50, 02/90 in the BoR. [ <a href="#">REP2-011</a> ], [ <a href="#">REP2-028</a> ].
Apparatus (s138)	None.
<b>Status summary:</b>	<p>The proposed onshore cable alignment crosses UKPN/ SPN alignments and assets in several locations.</p> <p>The Applicant records a separate commercial side agreement has been concluded (unseen). UKPN/ SPN withdrew its representations on 25 May 2019 [<a href="#">AS-021</a>].</p> <p>UKPN / SPN has withdrawn its representation (s127(1)(b)) and so the SoS has no further considerations under s127(5) and (6). There is no relevant apparatus (s138).</p>

<b>Name:</b>	BT
<b>Function(s) and Location(s):</b>	Local telecommunications service provider
<b>Interests:</b>	<b>Plots</b>
Rights (s127(5))	Rights of access, maintenance and other rights shown on sheets 1 and 2 of the Land Plans, over plots 01/80, 01/85, 01/105, 02/120, 02/121, 02/122, 02/123 and 02/130 in the BoR [ <a href="#">REP2-011</a> ], [ <a href="#">REP2-028</a> ].
Apparatus (s138)	None.
<b>Status summary:</b>	<p>The proposed onshore cable alignment crosses BT infrastructure and apparatus in several locations.</p> <p>The Applicant records that BT is content with protective provisions for telecommunications code operators in the dDCO [<a href="#">REP8-013</a>]. However, BT is not an IP and did not participate in the Examination.</p> <p>BT did not make a representation (s127(1)(b)) and so the SoS has no further considerations under s127(5) and (6). There is no relevant apparatus (s138).</p>

<b>Name:</b>	Scotia Gas Networks
<b>Function(s) and Location(s):</b>	Gas distribution operator in the local area
<b>Interests:</b>	<b>Plots</b>
Rights (s127(5))	Rights of access, maintenance and other rights shown on sheet 1 of the Land Plans, over plots 01/45 and 01/55 of the BoR [ <a href="#">REP2-011</a> ], [ <a href="#">REP2-028</a> ].
Apparatus (s138)	None.
<b>Status summary:</b>	Proposed access works on Sandwich Road may be in close proximity to a gas pipeline.  The Applicant records that Scotia Gas Networks is content with protective provisions for in the dDCO [ <a href="#">REP8-013</a> ]. However, Scotia Gas Networks is not an IP and did not participate in the Examination.  Scotia Gas Networks did not make a representation (s127(1)(b)) and so the SoS has no further considerations under s127(5) and (6). There is no relevant apparatus (s138).

- 10.6.63. Taking the positions in relation to statutory undertakers' land, rights and apparatus together, the SoS can be satisfied that, with one exception, relevant matters have been resolved to a point where there are no further considerations to be taken into account.
- 10.6.64. The exception relates to NGG. The gas transmission operator is a statutory undertaker and falls under the umbrella ownership of NG, alongside NGET. The original NG RR [[RR-027](#)] was made jointly on behalf of NGG in addition to NGET. NGG played no part in the Examination and no matters relevant to the operation of the gas transmission system were raised. However, NGG having been included in the original RR and become an IP, it would be desirable to reach clarity that there is no outstanding statutory undertaker objection of possible relevance to PA2008 ss127 or 138. NG's letter of 23 May 2019 [[AS-018](#)] contained errors (it referred to the existing Thanet OWF as distinct from the Proposed Development and its file name related to the Norfolk Vanguard NSIP). Whilst those errors were clarified in [[REP6A-017](#)], the ExA cannot wholly exclude the possibility that NGG's interests have been overlooked.
- 10.6.65. If the SoS were to be minded to make the Order, the ExA concludes as follows:
- If the SoS is minded to make the Order, it would be beneficial to consult with the Applicant and NGG before doing so, to confirm that NGG is unaffected by the Proposed Development and that the NG

letter of withdrawal of 23 May 2019 [\[AS-018\]](#) fully addressed the interests of NGG in addition to those of NGET.

**National Trust inalienable land (PA2008 s130)**

10.6.66. Only the National Trust benefits from the protection for declared inalienable land in PA2008 s130.

<b>Name:</b>	The National Trust	<a href="#">[RR-059]</a>
<b>Location(s):</b>	Foreshore and marsh at Pegwell Bay, Sandwich, Kent	
<b>Interests:</b>	<b>Plots</b>	
Rights	CA of rights in respect of Plots 00/05, 00/10, 01/01, 01/02, 01/05, 01/06 <a href="#">[REP2-037]</a> , <a href="#">[REP2-028]</a>	
<b>Status summary:</b>	The land is special category land as inalienable. There is in-principle willingness to conclude an agreement between the parties <a href="#">[REP6-091]</a> , but this was never concluded and the objecting RR and WRs were not withdrawn by the National Trust.	

10.6.67. The Proposed Development affects foreshore land and marsh north of the River Stour at Pegwell Bay, held inalienably by the National Trust, shown on the Special Category Land Plans [\[REP2-037\]](#) and recorded in the BoR [\[REP2-028\]](#) as subject to lease to and management for nature conservation purposes by KWT. The land forms the sea frontage of Pegwell Bay Country Park and augments the enjoyment of park users who (amongst other activities) use a hide to observe shorebirds, waders and seabirds on the National Trust land.

10.6.68. The Applicant has proposed the permanent acquisition (CA) of rights to site a cable landfall and cross the foreshore and marsh with the cable corridor. The National Trust has made previous agreements enabling the crossing of this land by the constructed Thanet OWF cable connection and by the Nemo Link interconnector.

10.6.69. The National Trust objects to the CA proposal and indicates that the relevant land is declared to be inalienable. It did not raise a detailed natural environment-related objection, deferring on natural environment management issues to its tenant and land manager, KWT. (These matters are addressed in Section 0 above). The concluded SoCG between the Applicant and National Trust [\[REP6-014\]](#) makes clear that the National Trust continues to dispute the basis for site selection for the cable landfall, taking the view that the Joss Bay route options 1 and 2 were excluded too early and on the basis of insufficient information.

10.6.70. The National Trust did indicate that it was prepared in principle to enter into an option agreement with the Applicant. However, agreement was

subject to sight of a detailed proposal and agreement to its terms, which had not been provided by the end of the Examination. In such circumstances, the National Trust asked the ExA to note that its CA objection was sustained [[REP6-091](#)].

10.6.71. Having considered relevant evidence in relation site selection and alternatives [[APP-040](#)] (ES Volume 3 Chapter 4) and to natural environment effects (see section 5.3, and chapter 7 above), noting also that existing electricity cables have been constructed across the Pegwell Bay foreshore with appropriate mitigation applied and without undue adverse residual effects, the ExA does not consider there to be a barrier in planning terms to the principle of the Applicant’s Proposed Development and use of this land for a cable alignment and hence to the CA of rights proposed. The individual CA proposal is of course subject to the SoS’ conclusion on the planning merits of the Proposed Development. If these are not made out, then the individual CA of this land would not be justified.

10.6.72. If the SoS were to be minded to make the Order, then on the basis that this unwithdrawn objection relates to inalienable land (see paragraph 10.4.7 above), SPP would apply unless the objection has been withdrawn since the closure of the Examination. For this reason, the ExA concludes as follows:

- If the SoS is minded to make the Order, it would be beneficial to consult with the Applicant and the National Trust before doing so, seeking advice on whether an agreement has been reached and the National Trust objection withdrawn. If this is not the case, SPP will apply before the Order could be made.

**Open Space (PA2008 s132)**

10.6.73. The Proposed Development affects one area of open space subject to protection under PA2008 s132: Pegwell Bay Country Park. Additionally, consideration must be given to the question of whether, as a consequence of a development plan allocation as ‘protected open space’, land at the Baypoint Club should be considered to be protected under the same section.

<b>Name:</b>	Kent County Council (KCC)	[ <a href="#">RR-059</a> ]
<b>Location:</b>	Pegwell Bay Country Park, Sandwich, Kent	
<b>Interests:</b>	<b>Plots</b>	
CA of rights	CA of rights in respect of plots identified in the Special Category Land Plans, and over the following plot references in the BoR 01/10, 01/11, 01/15, 01/20, 01/25, 01/30, 01/40, 01/60, 01/65, 01/70, [ <a href="#">REP2-037</a> ], [ <a href="#">REP2-028</a> ]	
TP	Temporary rights in respect of plots in the BoR 01/35, 01/50 [ <a href="#">REP2-028</a> ].	

**Status summary:** The land is special category land as public open space. PA2008 s132 does not rely on an objection to the proposal.

- 10.6.74. The Proposed Development affects Pegwell Bay Country Park, owned and operated by Kent County Council as public open space and shown on the Special Category Land Plans [[REP2-037](#)].
- 10.6.75. The Applicant has proposed the permanent acquisition (CA) of rights to cross the Country Park with the cable corridor. KCC has made previous agreements enabling the crossing of this land by the constructed NLL Nemo Link interconnector alignment, which was installed over much of the country park above ground to avoid interactions with potentially contaminated fill material and then covered by a bund. The proposed cable corridor would run parallel to the Nemo Link bund.
- 10.6.76. Additionally, the Applicant has proposed the TP of land in and adjacent to the cable corridor for construction and access purposes.
- 10.6.77. Having considered relevant evidence above in relation to site selection and alternatives [[APP-040](#)] (ES Volume 3 Chapter 4) and to natural environment effects (see section 5.3, and chapter 7 above), soil conditions [[APP-062](#)] (ES Volume 3 Chapter 6), and social and economic effects (see section 6.4 above), the ExA does not consider there to be a barrier in planning terms to the principle of the Applicant's Proposed Development and use of this land and hence to the CA of rights and the TP of land proposed.
- 10.6.78. The individual CA and TP proposals are subject to the SoS' conclusion on the planning merits of the Proposed Development. If these are not made out, then the individual CA of rights and TP of land in this location would not be justified.
- 10.6.79. If the SoS were to be minded to make the Order, then on the basis that the Applicant seeks rights over public open space land (see paragraph 10.4.7 above), SPP would be required unless the SoS is satisfied that a relevant exemption from it applies. In this instance, the ExA considers that the exemption in PA2008 s132(4B) would apply to the construction period, as the land would be occupied by the undertaker but on a temporary basis. In the operational period, the exemption in PA2008 s132(3) would apply because, following the construction of the cable, the land surface would be restored and hence would be no less advantageous to KCC and to the public than it currently is.
- 10.6.80. In reaching these conclusions, the ExA has noted the following matters:
- In the crossing of the country park by the NLL Nemo Link cable corridor, the cable was laid on the surface and covered by an above-ground bund. This has created a substantial and apparently enduring visual and physical barrier to the operation of the country park as open space by KCC and to its enjoyment by the public. This is

because, as observed by the ExA on three USIs (see from paragraph 10.5.13 above), the NLL Nemo Link bund is a substantial, steep-sided structure up to approximately 2m in height.

- Although covered in chalk soil, for whatever reason the NLL bund has not re-vegetated well and remains largely bare. The bund does not provide an equivalent surface to the remainder of the park, which is broadly level and covered in rough grass with areas of scrub and succession woodland species. It is both visually and physically intrusive, reducing the visual and practical enjoyment of the park for users. It is also fenced over significant distances, excluding public access to some of the land above it and enabling it to be crossed at only a limited number of designated crossing points, so constraining public access across the country park more broadly.
- As submitted, the application for the Proposed Development contained Landfall Option 2 to pass the cable alignment through the country park using the same technique. The cable would be laid on the surface and the construction of a second bund above ground would provide covering. The second bund would run parallel to the existing NLL Nemo Link bund. The extent of land affected by the Applicant's bund, its effect in-combination with the NLL Nemo Link bund and the interposition of a further visual and physical barrier for open space operators and users could have resulted (pursuant to PA2008 s132(3)) in the constructed cable alignment area being less advantageous to KCC and to the public than the undeveloped country park currently is. In such circumstances, SPP would apply and there would be no apparent basis for an exemption from it.
- However, as described in Chapter 2 above, the application was amended during Examination to remove Landfall Option 2. Having considered the residual impact of Options 1 and 3 for the passage of the cable alignment through the country park, the ExA is satisfied that these do not lead to an enduring reduction in advantage to KCC and the public, because they would enable what amounts to an equivalent to the existing surface conditions and use to be restored. It follows that the SPP exemption in PA2008 s132(3) can apply.

10.6.81. Where an exemption to SPP is sought, PA2008 s132 requires the DCO or related documentation to record the statutory basis for this. The preamble to the dDCO is already drafted to record that s132(3) of the 2008 Act applies, an approach that the ExA concurs with. To the extent that the Applicant seeks TP of a greater area of land than that over which it seeks rights, for access to and construction of the cable corridor, the ExA recommends that the dDCO should be amended before the Order is made to add a reference to the application of s132(4B) as the additional exemption from SPP applicable for the temporary use of open space land.

10.6.82. For these reasons the ExA concludes as follows:

- If the SoS is minded to make the Order, it would be on the basis that the exemptions to SPP in PA2008 ss132(3) and (4B) apply.
- If the SoS is minded to make the Order, the preamble should be amended to record that the SPP exemption in s132(4B) also applies.

<b>Name:</b>	None	<a href="#">[RR-059]</a>
<b>Location:</b>	Baypoint Club, Sandwich, Kent	
<b>Interests:</b>	<b>Plots</b>	
Rights	CA of rights in respect of Plots 01/85, 01/110, 02/10, 02/15, 02/20, <a href="#">[REP2-037]</a> , <a href="#">[REP2-028]</a> .	
TP of land	TP of plots 01/105, 02/05, 02/25 for construction and access <a href="#">[REP2-037]</a> , <a href="#">[REP2-028]</a> .	
<b>Status summary:</b>	The land is allocated as protected open space in the development plan. PA2008 s132 does not rely on an objection to the proposal. A finding of fact on the applicability of s132 is required.	

- 10.6.83. Chapter 3 records the development plan policies and proposals applicable to the Order Land. The Baypoint Club is noted in paragraph 3.10.7 above as being subject to a development plan allocation as 'protected open space' (raised in the DCC LIR [\[REP1-091\]](#)).
- 10.6.84. The Baypoint Club is operated as a private sports and recreation facility on land that Ramac holds freehold. The club is not an IP and the Ramac objection does not relate to the club or its interests. At no point in the Examination was it suggested that the effect of the development plan allocation was to do any more than to protect the undeveloped area of the site currently used as a sports field from built development. The Applicant did not identify the allocated land as special category land for the purposes of s132 PA2008 and there were no other representations suggesting that the land should be considered as such. However, for the avoidance of any later doubt or concern, the ExA considers it prudent to make a finding on this point.
- 10.6.85. "Open space" is defined in PA2008 s132(12) as having the same meaning as in section 19 of the Acquisition of Land Act 1981. There, open space is defined as follows:
- "open space" means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.*
- 10.6.86. As a matter of fact, from its inspection in ASI1, the ExA finds that the playing fields at the Baypoint Club are not so laid out, used (or disused). It is evidently not a public garden in any sense of that term. The essentially private and access-controlled nature of the club use of the land and facilities mean that whilst it is used in part for recreation, this is not public recreation. There is no evidence that it has ever been a burial ground.
- 10.6.87. For these reasons, the ExA concludes as follows:

- The allocation of the Baypoint Club land as protected open space in the development plan does not mean that it is open space for the purposes of PA2008 s132 and so if the Order were to be made, SPP would not apply to this land.

## **CONSIDERATION OF OTHER LAND AND RIGHTS NOT SUBJECT TO OBJECTIONS**

- 10.6.88. In addition to the land subject to objections and special category land considered above, the ExA has generally considered whether the statutory tests and the DCLG guidance are met on all remaining land proposed to be subject to CA and/ or TP.
- 10.6.89. The ExA's general observations on that land is that if the SoS is not minded to make the Order for reasons set out in Chapter 9 above, then the grant CA and TP powers over the remaining land would be unnecessary as the Proposed Development would not proceed.
- 10.6.90. However, if the SoS is minded to make the Order, then consideration must be given to the question of whether to confirm CA and TP powers over the balance of the land. The ExA deals with this question with reference to the Zones shown in Figure 10.1 above.

### **Figure 10.1: Zone 1**

- 10.6.91. Zone 1 consists of land required for the cable corridor, from the landfall and crossing the foreshore, Pegwell Bay Country Park and Stonelees Nature Reserve. It should be noted that the National Trust's objection remains unwithdrawn and hence there is potential for SPP on land in this zone. However, on balance, the ExA is content that, should the SoS wishes to grant development consent and subject to the outcome of SPP if that is required, all relevant statutory and policy requirements relating to CA and TP can be met on this land.

### **Figure 10.1: Zone 2**

- 10.6.92. Zone 2 consists primarily of land for the remainder of the cable corridor from the Baypoint Club, via the BCA Compound to the UK Border Force Compound and surrounding Ramac land (subject to the lease to Crostline Ltd.) Ramac is the freeholder of the great extent of this land. The effect of the ExA's consideration of the Ramac objection is that it does not consider that the statutory and policy requirements relating to CA and TP can be met on this land (in respect of the plots identified from paragraph 10.6.20 above). It follows that the ExA does not recommend confirmation of those powers here. The implications of that position for the Order are addressed in Chapter 11.

### **Figure 10.1: Zone 3**

- 10.6.93. Zone 3 consists in general terms of the cable connection between the proposed substation site across the A256 and the grid connection location on land within Richborough Energy Park – Work No. 16. There are no outstanding (unwithdrawn) objections relating to the CA and TP request on this land. The ExA notes that as this land hosts the



connection point to the NGET Richborough transmission line, this is the only available location at which the Proposed Development can achieve a grid connection with the onshore infrastructure broadly as applied for.

- 10.6.94. The Richborough Energy Park is under active development for existing and new energy-related uses. For this reason, the cable corridor through the park contains optional provision for three possible routes to the grid connection point, enabling the avoidance of possible development proposals by others. These are referred to in the DCO as option 1, option 2 and option 3 respectively. The Applicant is clear that only one such route would need to be constructed and, if this occurs, the rights sought over the other corridor options could fall away. Following discussion between the Applicant and the ExA at CAH2, the Applicant amended the DCO at Art 19(5) to ensure that rights relevant to Work No. 16 applicable to an unexercised option would cease to apply, once another option has been exercised.
- 10.6.95. On balance, the ExA is content that, should the SoS wish to grant development consent and subject to the outcome of SPP if that is required, all relevant statutory and policy requirements relating to CA and TP can be met on this land.
- 10.6.96. For these reasons, the ExA concludes as follows.
- If the SoS is minded to grant development consent, the CA and TP request relating to land and rights in descriptive zone 1 should be confirmed.
  - If the SoS is minded to grant development consent, the CA and TP request relating to land and rights in descriptive zone 2 should not be confirmed because relevant statutory tests and guidance are not met by this request.
  - If the SoS is minded to grant development consent, the CA and TP request relating to land and rights in descriptive zone 3 should be confirmed on the basis that the DCO contains provision in Art 19 providing for the extinction of CA powers in relation to land affected by an unexercised option, after one of the three cable alignment options has been selected and exercised.

### **CROWN LAND (PA2008 s135)**

- 10.6.97. The maritime components of the Order land are held by and would be subject to a lease from tCE. A formal agreement for lease (AfL) has yet to be concluded between the Applicant and tCE. The scale of development is a matter that is still unagreed, on the basis that the application proposes development of an OWF up to 340 MWe, whereas tCE has indicated in principle willingness to consider development up to 300 MWe [[REP3-088](#)]. The difference is not insurmountable. Even if tCE were not to agree an upward variation, a 300 MWe project is within the Rochdale Envelope provided for in the ES. The ExA observes that ongoing discussions between the Applicant and tCE may secure agreement prior to the SoS' decision.

- 10.6.98. Before a decision is made however, the SoS is recommended to seek correspondence from tCE confirming the maximum installed generating capacity for which it is prepared to enter a lease and also that there has been an unconditional grant of consent under PA2008 s135.
- 10.6.99. Onshore, the acquisition of the UK Border Force compound affects a Crown interest in land, administered by MoJ. MoJ consent is required under PA2008 s135. The SoS is recommended to confirm that this consent has been granted before a decision is made.

## **AVAILABILITY AND ADEQUACY OF FUNDS**

- 10.6.100. The Applicant submitted a FS with the application [[APP-042](#)]. This was orally examined in CAH1.
- 10.6.101. At that hearing the ExA raised as an issue that it was possible (indeed probable) that the transmission assets (which are the sole basis for the CA and TP request and so provide the basis for compensation claims) could be constructed by a special purpose vehicle (SPV) other than the Applicant and/ or transferred to an Offshore Transmission Owner (OFTO). Such approaches are normal practice in the OWF sector. If such a transfer were to occur, the ExA observed that it would be necessary to provide a guarantee for the funds for CA and/ or TP compensation, applicable to the body that would benefit from the Order at the relevant time and against whom such claims would be made. There are several established methods of providing such guarantees, including putting a guarantee to the satisfaction of the SoS on the face of an Order, concluding a commercial agreement or a planning obligation. The Applicant was requested to make proposals to address this issue.
- 10.6.102. The Applicant made changes to the FS and the dDCO following CAH1 to respond to the ExA's concerns. The most recent FS was submitted at D3 (Revision B) [[REP3-011](#)] and the relevant drafting in the dDCO reflecting these changes can be found in the version submitted at D8 [[REP8-013](#)]. The FS Revision B (at Section 5) and the D8 dDCO (Art 5) both make provision for a financial guarantee in circumstances where the onshore transmission elements of the project are transferred to a SPV.
- 10.6.103. The ExA is broadly content that the dDCO contains provisions that:
- secure the provision of a sum of funds broadly equivalent to the current likely quantum of funding for compensation associated with CA and TP; and
  - secures that, in circumstances where there might be a transfer of the benefit of the Order to a SPV, or of transmission assets to an OFTO, the transferee would be statutorily bound to provide this sum for any outstanding compensation claims.
- 10.6.104. However, the ExA has outstanding concerns about the adequacy of and security for this funding on which it recommends changes to the DCO. On the basis that there was not sufficient time to consult the Applicant on these proposed changes before the close of the Examination, if the SoS is

minded to make the Order, consultation with the Applicant on these points prior to the making of the Order is recommended.

10.6.105. The first of these relates to the need for financial security where the undertaker remains as the Applicant and no SPV or OFTO is yet in place. The dDCO as presently drafted does not provide financial security for compensation funds in circumstances where the Applicant itself (or one of its direct subsidiaries) were to commence development and so be prospectively liable for compensation claims. No matter what circumstances of corporate structure and ownership might apply at the commencement of development, the availability of these funds should be subject to a guarantee. For this reason:

- The ExA recommends that if the SoS were to be minded to make the Order, it should be amended to provide that the undertaker may not exercise any of the powers provided in Parts 3, 4, 5 and 6 of the Order in relation to any land unless it has first put in place a financial guarantee or an alternative form of security to the satisfaction of the SoS.

10.6.106. The second relates to the sum of the guarantee. Art 5(6) seeks to cap all liability in the guarantee at £8.5 million. Reference to other made Orders containing guarantee provisions in similar circumstances shows that no such limitations are not normally applied<sup>222</sup>. Whilst the ExA has no reason to dispute the Applicant's evidence that this sum is sufficient to cover all projected liabilities, OWF projects can take a substantial period of time to develop and property values can rise or fall significantly across similar timescales. There should be no risk that any individual claimant could be under-compensated on the basis that there was a statutory bar to the maximum size of the fund, or that a later claimant should receive less satisfaction than an earlier claimant on a similar basis. For these reasons:

- The ExA recommends that if the SoS is minded to make the Order, Art 5(6) seeking to cap the value of the compensation fund should be struck out.

10.6.107. These recommended changes are taken up in Chapter 11 (the DCO) and Appendix D.

## **HUMAN RIGHTS**

10.6.108. Human rights from the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights or ECHR) are given effect to in domestic law by the Human Rights Act 1998 (as amended).

10.6.109. Article 6 entitles APs to a fair and public hearing of their objections and is engaged. The ExA's provision of CAH1 and 2 and an OFH at which CA issues might also have been raised has enabled any AP who wished to be

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<sup>222</sup> See for example the made [Dogger Bank Teesside A&B Order](#) Art 9.

heard to be heard fully, fairly and in public. Multiple opportunities for the submission of WRs have also been provided.

- 10.6.110. On the basis that the Proposed Development does not propose to take land or rights in a manner that directly affects any dwellings or other places relevant to private and family life, Article 8 relating to the right of the individual to '*respect for his private and family life, his home ...*' is not engaged.
- 10.6.111. Article 1 of the First Protocol (the right to peaceful enjoyment of property) is engaged, as this is relevant to commercial as well as to residential property. The CA and TP request relates to commercial property.
- 10.6.112. Having considered the conclusions from Chapter 9 that the planning merits case for the Proposed Development is not made out, the ExA observes that in circumstances where the SoS agrees with those conclusions, the proposed interference with individuals' rights under Article 1 of the First Protocol would not be lawful, necessary, proportionate and justified in the public interest.
- 10.6.113. Alternatively however, if the SoS were to consider that the planning merits case for the Proposed Development is made out and proposes to make the Order, then depending on the SoS' own appraisal of the Proposed Development, its compliance with policy and benefits in those circumstances, it is possible that the proposed interference with most individuals' rights could be lawful, necessary, proportionate and justified in the public interest.
- 10.6.114. In reaching such a view however, the SoS would need to be clear that the extent of the land and rights to be taken from Ramac to enable construction of the substation and the relocation of the UK Border Force compound on land to remain in the freehold of the undertaker was lawful, necessary, proportionate and justified in the public interest. If following the ExA's reasoning from paragraph 10.6.20 above the SoS were to conclude that the extent of the land and rights to be taken from Ramac was more than is reasonably required to provide and facilitate the Proposed Development (s122(2) PA2008), is not proportionate and hence does not justify the inevitable interference with the human rights of those affected (DCLG CA Guidance paragraph 10), then the Order might be made excluding CA over the plots in Zone 2.
- 10.6.115. The ExA therefore concludes that:
- Interference with human rights arising under Article 1 of the First Protocol of the ECHR is not justified in circumstances where the SoS concludes that the planning merits of the Proposed Development are not made out.
  - Should the SoS conclude that the planning merits of the Proposed Development are made out, it will be necessary to review the implications of the decision to make the Order for human rights, before the Order is made.

- In these circumstances, if the SoS concludes that the Order should be made but that CA and TP powers over the Ramac Zone 2 land cannot be justified, then Chapter 11 below sets out means by which this land can be excluded from the scope of granted CA and TP powers.

## **10.7. CONCLUSIONS**

10.7.1. As can be seen from the above facts and reasoning, the setting for a decision on the CA and TP proposal in the application is complex. However, the decision by the SoS on CA and TP is a consequential one, in the main driven by the decision on the planning merits of the Proposed Development. For this reason, the ExA frames its conclusions and recommendations on CA and TP in two alternative forms:

- If the SoS concurs with the ExA's conclusions in Chapter 9 and proposes not to make the Order, then the primary CA and TP recommendation is that the CA and TP request should not be granted.
- However, if the SoS proposes to make the Order, the ExA sets out an alternate CA and TP recommendation below, which summarises the matters that would need to be addressed before and in the decision.

### **Primary CA and TP Recommendation**

10.7.2. For reasons summarised there, the ExA's conclusion on the planning balance in Chapter 9 is that the Proposed Development contravenes relevant NPS policy (PA2008 s104(3)) and that its adverse impacts outweigh its benefits (PA2008 s104(7)). In such circumstances, the CA tests set out in PA2008 s122 are not met. If the SoS does not support the grant of development consent, it follows that:

- land and / or rights are not required for the development to which the development consent relates (s122(2)(a));
- land and / or rights are not required to facilitate or as incidental to development because the development will not proceed (s122(2)(b));
- because the development will not proceed, no replacement land is required (s122(2)(c); and
- in the absence of a case in policy and planning merits for the development to proceed, there is no compelling case in the public interest for land to be acquired compulsorily (s122(3)).

10.7.3. Similarly, and for the same reasons, there would then be no reason for the SoS to reach any conclusions on special category land, Crown land, funding arising from PA2008 or on human rights considerations.

10.7.4. The same tests do not apply to the TP aspects of the CA and TP request. However, it is sufficient to record that all TP proposals in the application support the primary objective of developing, operating and maintaining the OWF. If development consent including CA powers is not to be granted for that purpose, then there is no remaining justification for any TP powers. Similarly, no human rights considerations would arise.

10.7.5. In these circumstances, with reference to the DCLG Guidance 'Award of costs: Examinations of applications for development consent orders' (July

2013)<sup>223</sup> Part D paragraph 4, if the SoS refuses development consent, all persons who have maintained a CA objection at all times up to the SoS' decision and participated in the Examination are successful objectors and may seek an award of costs. Eligibility for an award of costs in such circumstances does not require the person seeking the award to demonstrate unreasonable behaviour by the Applicant.

## **Alternate CA and TP Recommendations**

10.7.6. However, if the SoS does not agree with the ExA's main conclusion in Chapter 9 and proposes to make the Order, the following CA and TP considerations emerge for decision:

- In relation to inalienable National Trust land, it would be beneficial to consult with the Applicant and the National Trust before making the Order, seeking advice on whether an agreement has been reached and the National Trust objection withdrawn. If this is not the case, PA2008 s130 SPP would apply before the Order could be made.
- The exemptions to SPP over open space at Pegwell Bay Country Park in PA2008 ss132(3) and (4B) apply.
- The allocation of the Baypoint Club land as protected open space in the development plan does not indicate that it is open space for the purposes of PA2008 s132 and so if the Order were to be made, SPP would not apply to this land.
- It will be necessary to review the implications of the decision for human rights, before the Order is made.
- If the SoS considers that a CA, TP and human rights case to take the Zone 2 Ramac land are not made out, then the SoS may make the Order but exclude the Zone 2 Ramac land from the scope of CA and TP powers.
- Unconditional consent from Crown entities tCE and (if CA of the UK Border Force compound is proposed) MoJ should also be confirmed before decision.

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<sup>223</sup> [DCLG Guidance 'Award of costs: examinations of applications for development consent orders'](#) (July 2013)

# 11. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

## 11.1. INTRODUCTION

- 11.1.1. The application draft Development Consent Order (dDCO) [[APP-022](#)]<sup>224</sup> and an Explanatory Memorandum (EM) [[APP-023](#)] were submitted by the Applicant as part of the application for development consent. The EM describes the purpose of the dDCO as originally submitted, with each of its articles and schedules.
- 11.1.2. The application dDCO was broadly based on the Model Provisions (MPs) (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) but departed from those clauses to draw upon drafting used in made Orders for other energy development under PA2008.
- 11.1.3. This Chapter provides an overview of the changes made to the dDCO during the Examination process, between the application dDCO and a preferred dDCO submitted by the Applicant at D8 [[REP8-013](#)] (Revision I) together with a revised EM [[REP8-015](#)]. It then considers changes made to the preferred dDCO in order to arrive at the DCO in Appendix D to this Report.
- 11.1.4. The following sections of this Chapter:
- report on the processes that the ExA used to examine the dDCO and its progress through the Examination;
  - address the Applicant's approach to drafting the EM and its approach to and submissions on the matter of precedent;
  - report on the structure of the dDCO;
  - briefly summarise changes made to the dDCO during the Examination up to D8 that were not the subject of contention (where, following consultation and dialogue as necessary, the Applicant and relevant Interested Parties (IPs) supported the changes);
  - report in more detail on those changes that were the subject of detailed and unresolved submissions;
  - set out final changes that the ExA has proposed subsequent to D8, consequent on our consideration of the evidence and to address matters of drafting convention;
  - address the relationship between the DCO and other consents and legal agreements; and
  - address the provision of a defence against nuisance in the DCO.
- 11.1.5. For reasons set out in Chapter 9, the ExA has recommended that development consent for the Proposed Development should be withheld. However, that is a recommendation with which the SoS may not agree. The ExA must provide the SoS with a dDCO that, if the SoS is minded to

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<sup>224</sup> There was no version number for the submitted dDCO.

make the Order, in its view represents the best achievable dDCO. That dDCO is set out in Appendix D.

- 11.1.6. For reasons set out further below in this Chapter, the ExA does propose some changes between the Applicant's preferred draft DCO (Revision I at D8 [[REP8-013](#)]) and the dDCO in Appendix D (the 'proposed changes'). Because the dDCO in Appendix D is not a recommended DCO, these changes are not formally recommended by the ExA. However, if the SoS were to decide to make the Order, the ExA suggests that that an Order in the form and containing the proposed changes set out in Appendix D would be a starting point. Furthermore, it should be noted that, in contrast with a Recommendation Report that recommends that an Order should be made, the dDCO in Appendix D is not a recommended Order. There are matters relating to navigational safety that the ExA would consider should be provided for in a made Order that cannot lawfully be provided for in this dDCO and so remain unaddressed in Appendix D. These matters are addressed further below.

## **11.2. THE EXAMINATION OF THE DCO**

- 11.2.1. The ExA's review of the application versions of the dDCO [[APP-022](#)] and the EM [[APP-023](#)] commenced before the Preliminary Meeting (PM). However, the Applicant replaced the application version dDCO early in the Examination at D1 (Revision A<sup>225</sup>) [[REP1-062](#)] and this became the foundation version dDCO.
- 11.2.2. Noting that there were a number of planning merits issues arising from objections that had the potential to require change to the dDCO submitted with the application, the ExA decided not to hold ISHs into the DCO until an initial round of hearings on planning merits matters had

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<sup>225</sup> Version control over submitted Application and work-in-progress dDCOs was not consistently maintained by the Applicant. The Application dDCO has no version indicator. The amended dDCO submitted at D1 was Revision A. The tracked changes dDCO submission at D2 was Revision B. The clean dDCO submission at D2 and the tracked changes dDCO submission at D3 are both recorded by the Applicant as Revision C (noted by the ExA as (i) and (ii) respectively). The clean dDCO submission at D3 and the tracked changes dDCO submission at D4 are both recorded by the Applicant as Revision D (noted by the ExA as (i) and (ii) respectively). The clean dDCO submission at D4, the tracked changes dDCO submission at D4B and at D5 are all recorded by the Applicant as Revision E (noted by the ExA as (i), (ii) and (iii) respectively). There was no clean version of the dDCO submitted at D4B. The clean dDCO submission at D5 and the tracked changes dDCO submission at D6 are both recorded by the Applicant as Revision F (noted by the ExA as (i) and (ii) respectively). The clean dDCO submission at D6 and the tracked changes dDCO submission at D7 are both recorded by the Applicant as Revision G (noted by the ExA as (i) and (ii) respectively). The clean dDCO submission at D7 and the tracked changes dDCO submission at D8 are both recorded by the Applicant as Revision H (noted by the ExA as (i) and (ii) respectively).



been held and the Applicant had had an opportunity to translate matters arising into a revised draft if needs be.

11.2.3. Matters for Examination arising from the DCO and progress on them were tracked throughout the Examination, using ISHs on the DCO, held as follows:

- **ISH7**, 21 February 2018 [[EV-009](#)] (Annex A) (Notice), [[EV-017](#)] (Agenda), [[EV-037](#)] [[EV-038](#)] (Audio); and
- **ISH9**, 18 April 2019 [[PD-010](#)] (Annex B) (Notice), [[EV-069](#)] (Annex B) (Agenda), [[EV-060](#)] (Audio).

11.2.4. The Applicant further updated the dDCO several times during the Examination, responding to issues raised by the ExA in questions, to written representations (WRs) and as a consequence of the hearing processes. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The 'work-in-progress' versions of the dDCO submitted by the Applicant during the Examination were as follows:

- Revision C(i) [[REP2-035](#)] (clean copy) and Revision B [[REP2-034](#)] (tracked changes) was submitted at D2 in response to matters raised in WRs and written questions (ExQ1);
- Revision D(i) [[REP3-048](#)] (clean copy) and Revision C(ii) [[REP3-049](#)] (tracked changes) were submitted at D3 responding broadly to matters raised at hearings in February, including ISH7 into the dDCO;
- Revision E(i) [[REP4-003](#)] (clean copy) and Revision D(ii) (tracked changes) were submitted at D4;
- Revision E(ii) [[REP4B-021](#)] (tracked changes) was submitted at D4B with changes to respond to the material change request to include the Structures Exclusion Zone (SEZ). There was no clean copy submitted at this deadline;
- Revision F(i) [[REP5-019](#)] (clean copy) and Revision E(iii) [[REP5-045](#)] (tracked changes) were submitted at D5 including technical changes (mainly addressing matters raised by the MMO);
- Revision G(i) [[REP6-068](#)] (clean copy) and Revision F(ii) [[REP6-072](#)] (tracked changes) were submitted at D6. The Applicant advised the Planning Inspectorate that whilst text was correct, some number formatting in the clean version of the D6 dDCO was incorrect. The Applicant undertook to replace this version with a correctly formatted version at D7; and
- Revision H(i) [[REP7-008](#)] (clean copy) and Revision G(ii) [[REP7-013](#)] (tracked changes) were submitted at D7 and addressed the matters that had arisen at D6, alongside outstanding matters arising from earlier deadlines.

11.2.5. In the interests of obtaining the best possible dDCO for consideration by the SoS, the ExA published a Commentary on the dDCO [[PD-017](#)] for consultation on 7 May 2019 (the ExA Commentary). This raised outstanding legal, technical and related drafting matters but did not address planning merits considerations bearing on whether the Order should be made. The Applicant and relevant IPs and OPs were invited to respond by D6 and to comment on responses by D7. Whilst it was

intended that the Applicant would also submit a preferred dDCO at D7, as matters eventuated, the need for the Applicant to comment on outstanding matters meant that this submission did not occur until D8. The ExA has taken all responses to this commentary into account.

- 11.2.6. Revision I to the dDCO [[REP8-013](#)] (clean copy) and Revision H(ii) [[REP8-018](#)] (tracked changes) were submitted at D8 and represent the Applicant's preferred dDCO. The ExA bases the analysis in this Chapter on Revision I, whilst taking response to the dDCO from relevant IPs and OPs in the closing stages of the Examination into account. Unless specifically indicated otherwise, all references to provisions in the dDCO in this Chapter are based on Revision I, which also forms the basis of the DCO in Appendix D.

## **11.3. THE STRUCTURE OF THE DCO**

- 11.3.1. This section records the structure of the dDCO. The structure of the dDCO is taken from the Applicants preferred Revision I dDCO submitted at D8 [[REP8-013](#)] and is as follows.

### **Articles**

#### *PART 1*

##### *Preliminary*

1. Citation and commencement
2. Interpretation

#### *PART 2*

##### *Principal Powers*

3. Development consent etc. granted by the Order
4. Power to construct and maintain authorised project
5. Benefit of the Order
6. Application and modification of legislative provisions
7. Defence to proceedings in respect of statutory nuisance

#### *PART 3*

##### *Streets*

8. Street Works
9. Temporary stopping up of public rights of way
10. Temporary stopping up of streets
11. Access to works

12. Agreements with street authorities
13. Application of the 1991 Act

#### *PART 4*

##### *Supplemental Powers*

14. Discharge of water and works to watercourses
15. Authority to survey and investigate the land onshore
16. Public rights of navigation

#### *PART 5*

##### *Powers of Acquisition*

17. Compulsory acquisition of land
18. Time limit for exercise of authority to acquire land compulsorily
19. Compulsory acquisition of rights
20. Private rights
21. application of the Compulsory Purchase (Vesting Declarations) Act 1981
22. application of Part 1 of the Compulsory Purchase Act 1965
23. Acquisition of subsoil only
24. Rights under or over streets
25. Temporary use of land for carrying out the authorised project
26. Temporary use of land for maintaining the authorised project
27. Statutory undertakers
28. Recovery of costs of new connections

#### *PART 6*

##### *Operations*

29. Operation of generating station
30. Deemed marine licences under the 2009 Act

#### *PART 7*

##### *Miscellaneous and General*

31. Application of landlord and tenant law

32. Operational land for purposes of the 1990 Act
33. Felling or lopping of trees and removal of hedgerows
34. Trees subject to tree preservation orders
35. Certification of plans etc.
36. Arbitration
37. Procedure in relation to certain approvals etc.
38. Abatement of works abandoned or decayed
39. Saving provisions for Trinity House
40. Crown rights
41. Protective provisions

## **Schedules**

*SCHEDULE 1: Authorised Project*

PART 1: Authorised Development

PART 2: Ancillary Works

PART 3: Requirements

*SCHEDULE 2: Streets subject to Street Works*

*SCHEDULE 3: Public Rights of Way to be Temporarily Stopped Up*

*SCHEDULE 4: Access to Works*

*SCHEDULE 5: Land in which only New Rights etc., may be acquired*

*SCHEDULE 6: Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights*

*SCHEDULE 7: Land of which Temporary Possession may be taken*

*SCHEDULE 8: Protective Provisions*

PART 1: Protection for Electricity, Gas, Water and Sewerage Undertakers

PART 2: For the Protection of National Grid as Electricity and Gas Undertaker

PART 3: Protection for Operators of Electronic Communications Code Networks

*SCHEDULE 9: Arbitration Rules*

*SCHEDULE 10: Procedure for Discharge of Requirements*

*SCHEDULE 11: Deemed Licence under the 2009 Act – Generation Assets*

PART 1: Interpretation

PART 2: Licensed Marine Activities – General

PART 3: Details of Licensed Marine Activities

PART 4: Conditions

PART 5: Procedure for Appeals

PART 6: Arbitration

*SCHEDULE 12: Deemed Licence under the 2009 Act – Export Cable System*

PART 1: Interpretation

PART 2: Licensed Marine Activities - General

PART 3: Details of Licensed Marine Activities

PART 4: Conditions

PART 5: Procedure for appeals

PART 6: Arbitration

*SCHEDULE 13: Documents to be Certified*

PART 1: Documents forming the environmental statement to be certified

PART 2: Other documents to be certified

*SCHEDULE 14: Appeals Procedure*

- 11.3.2. The ExA is broadly content that the structure of the DCO is fit for purpose. Structural changes discussed below and included in Appendix D are consequential in nature, responding to the need to add new provisions and to re-number provisions later in the dDCO, when provisions earlier in the dDCO are proposed to be removed. Giving effect to those changes, if the SoS were minded to make the DCO taking account of proposed changes, the structure is proposed to be as follows:

## **Articles**

### *PART 1*

#### *Preliminary*

1. Citation and commencement
2. Interpretation

### *PART 2*

#### *Principal Powers*

3. Development consent etc. granted by the Order
4. Power to construct and maintain authorised project
5. Benefit of the Order
6. Application and modification of legislative provisions

7. Defence to proceedings in respect of statutory nuisance

### *PART 3*

#### *Streets*

8. Street Works
9. Temporary stopping up of public rights of way
10. Temporary stopping up of streets
11. Access to works
12. Agreements with street authorities
13. application of the 1991 Act

### *PART 4*

#### *Supplemental Powers*

14. Discharge of water and works to watercourses
15. Authority to survey and investigate the land onshore
16. Public rights of navigation

### *PART 5*

#### *Powers of Acquisition*

17. Compulsory acquisition of land
18. Time limit for exercise of authority to acquire land compulsorily
19. Compulsory acquisition of rights
20. Private rights
21. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
22. application of Part 1 of the Compulsory Purchase Act 1965
23. Acquisition of subsoil only
24. Rights under or over streets
25. Temporary use of land for carrying out the authorised project
26. Temporary use of land for maintaining the authorised project
27. Statutory undertakers
28. Recovery of costs of new connections

## *PART 6*

### *Operations*

29. Operation of generating station
30. Deemed marine licences under the 2009 Act

## *PART 7*

### *Miscellaneous and General*

31. Application of landlord and tenant law
32. Operational land for purposes of the 1990 Act
33. Felling or lopping of trees and removal of hedgerows
34. Trees subject to tree preservation orders
35. Certification of plans etc.
36. Arbitration
37. Procedure in relation to certain approvals etc.
38. Abatement of works abandoned or decayed
39. Saving provisions for Trinity House
40. Crown rights
41. Protective provisions
42. Funding (a new provision)

## **Schedules**

### *SCHEDULE 1: Authorised Project*

PART 1: Authorised Development

PART 2: Ancillary Works

PART 3: Requirements

### *SCHEDULE 2: Streets subject to Street Works*

### *SCHEDULE 3: Public Rights of Way to be Temporarily Stopped Up*

### *SCHEDULE 4: Access to Works*

### *SCHEDULE 5: Land in which only New Rights etc., may be acquired*

### *SCHEDULE 6: Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights*

### *SCHEDULE 7: Land of which Temporary Possession may be taken*

### *SCHEDULE 8: Protective Provisions*

PART 1: Protection for Electricity, Gas, Water and Sewerage Undertakers

PART 2: For the Protection of National Grid as Electricity and Gas Undertaker

PART 3: Protection for Operators of Electronic Communications Code Networks

*SCHEDULE 9: Procedure for Discharge of Requirements*

*SCHEDULE 10: Deemed Licence under the 2009 Act – Generation Assets*

PART 1: Interpretation

PART 2: Licensed Marine Activities – General

PART 3: Details of Licensed Marine Activities

PART 4: Conditions

*SCHEDULE 11: Deemed Licence under the 2009 Act – Export Cable System*

PART 1: Interpretation

PART 2: Licensed Marine Activities - General

PART 3: Details of Licensed Marine Activities

PART 4: Conditions

*SCHEDULE 12: Documents to be Certified*

PART 1: Documents forming the environmental statement to be certified

PART 2: Other documents to be certified

## **11.4. DRAFTING ISSUES**

11.4.1. The following issues of drafting principle emerged between the Applicant, IPs and OPs during the Examination:

- the approach to arbitration in the dDCO;
- confusion about the role of arbitration and its interface with appeals in relation to relevant decisions made under the DCO;
- changes to the dDCO necessary to give effect to the material change to introduce the SEZ into the application; and
- timescales for the approval of pre-construction plans and documentation under the DMLs, deemed approvals in default and appeals against refusals on decisions by the MMO.

11.4.2. In addition to these issues, IPs and OPs made detailed contributions in writing and orally at ISH7 and ISH9. The Applicant took a generally collaborative approach to drafting and, as such, its preferred dDCO at D8 [[REP8-013](#)] appears to have addressed all substantive issues raised through these interventions, with the exception of those identified above. The ExA has (as is normal practice in NSIP Examinations) based its reporting on the dDCO on the matters of outstanding disagreement. It



does not report in detail on matters that were agreed between the parties and reflected in the Applicant's preferred dDCO at D8.

11.4.3. However, as a consequence of a late material change to the application, the Applicant's preferred dDCO was not submitted until D8, a later point in Examination than is typically the case. It should be noted that IPs and OPs have not had a full opportunity to comment on the drafting before the close of the Examination. For this reason:

- If the SoS is minded to make the Order, the ExA considers that it would be beneficial for the final dDCO as proposed to be made to be consulted with IPs and OPs and for account to be taken of any final comments.

### **Arbitration provisions**

11.4.4. One major issue of drafting principle emerged between the Applicant, IPs and OPs during the Examination: the question of how to define and provide for the remit of arbitration under the dDCO.

11.4.5. The starting point for arbitration in NSIP DCO practice is found in Sch 1 Paragraph 42 of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the MPO), which provides as follows:

*Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the [insert appropriate body].*

11.4.6. In early dDCOs, in line with practice in Orders made under the Transport and Works Act 1992, the 'appropriate body' to appoint an arbitrator in default of agreement was typically proposed to be the President of a relevant professional institution, such as the Institution of Civil Engineers (ICE). However, as time has progressed and the scope and scale of energy developments subject to DCOs has expanded, the SoS and predecessors have been persuaded that the default appointment of an arbitrator needs to reflect the public and public interest nature of the matters subject to arbitration and the fact that disputes may not neatly fall within the remit or expertise of a single professional institution. For these reasons, a considerable number of made Orders have established that the SoS is the 'appropriate body' for inclusion in arbitration clauses based on MPO Sch 1 para 42.

11.4.7. Arbitration clauses based on MPO Sch 1 para 42 as evolved in energy practice have typically been simple, limited in remit and adopted common drafting. Recent examples are set out below:

*Any difference under any provision of this Order, unless otherwise provided for shall be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by*

*the Secretary of State.* (General arbitration provision in the made **Burbo Bank Extension Offshore Wind Farm Order 2014**, Art 13.

(Burbo Bank Extension is a useful analogue to this case because it is for the extension of an existing Round 1 OWF in close proximity to a major estuary and port facilities.)

*Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.* (General arbitration provision in the made **Hornsea Two Offshore Wind Farm Order 2016**, Art 41.)

*Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.* (General arbitration provision in the made **East Anglia THREE Offshore Wind Farm Order 2017**, Art 33)

*If no Proximity Agreement is concluded or the parties shall not have agreed whether paragraph 83 applies within the period specified in paragraph 81 the outstanding matters in dispute must be referred to an arbitrator and the Undertakers' Works must not commence until the determination of the arbitrator has been made and must only be implemented in accordance with the arbitrator's determination which is final and binding on the parties (save for manifest or legal error)—*

- (i) the arbitration shall be decided by a sole arbitrator whose appointment shall be agreed by the parties*
- (ii) the arbitrator shall be a person (including one who has retired) with not less than ten years' experience of offshore oil and gas development or offshore wind farm development or as a lawyer or other professional advisor serving those industries*
- (iii) where the parties fail to agree to appoint an arbitrator within 28 days of the delivery of a notice of arbitration, then upon application the Secretary of State will appoint an arbitrator within 28 days. At any time prior to the appointment by the Secretary of State the parties may make an appointment*
- (iv) the intention of the parties is that, so far as is practical, the arbitrator should make a determination within 3 months of appointment*
- (v) the seat of arbitration shall be London*

(Special arbitration provision in the made **East Anglia THREE Offshore Wind Farm Order 2017**, Sch 8 Part 7, Protection for oil and gas licensees, at Para 85, in circumstances where dispute resolution models applicable to the OWF and oil and gas sectors were included in compromise terms in a protective provision.)

- 11.4.8. In terms of simplicity, these examples illustrate that drafting has proceeded on the basis that arbitration is a likely to be a rare if not exceptional occurrence and that they do not need to specify in any detail how, on what terms or by what procedures arbitration is to proceed. Matters of such detail are left for the arbitrator on the occasion that one might be appointed. In terms of limitation of remit, arbitration has been confined to differences under any provision of the Order and has not been applicable in circumstances where an alternative procedure (such as a formal appeal mechanism) is provided. Arbitration equally has not stood and cannot stand in the stead of recourse to formal judicial challenge, where such rights arise.
- 11.4.9. As can be seen from the East Anglia THREE Protective Provision, not all drafting has to be the same or be based on the MPO. There is scope for bespoke drafting to meet particular specified needs, in that case an overlap between the proposed array area and licensed exploration blocks for oil and gas resources. There, the interface between an undertaker benefiting from the Order and an oil or gas explorer benefiting from its license justified the need for more detailed provision than is found in a typical arbitration clause. However, despite the potential complexity of a cohabitation dispute between two industry sectors, each with their own established practices, an underlying simplicity of drafting approach was retained.
- 11.4.10. In contrast, the dDCO in this case proposes a more complex arbitration provision that those that are typically employed.

**36.—** (1) Subject to **Article 39** (Saving provisions for Trinity House), any dispute or decision under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at **Schedule 9** of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Centre for Effective Dispute Resolution.

(2) The procedure in sub-section (1) does not apply to the discharge of requirements under **Schedule 10**.

- 11.4.11. The key elements of difference from the evolved MPO drafting referred to above are as follows:
- The provision has an extended remit to address 'any dispute or decision' (introduced as a clarification following MMO concerns that a 'difference' does not entrain the outcome of a decision by a statutory regulator ([\[REP5-062\]](#) at para 3.1.4). It is no longer limited to 'any difference'. On its face, this drafting brings the factual outcome of any decision made under the dDCO within the scope of arbitration, whether there is a 'difference' or not. It transforms arbitration from being a rarely used but practical means of resolving an otherwise intractable dispute into a standing quasi-appellate mechanism to

challenge any decision-making under the Order, whether there is an underlying difference or not.

- Reference to Sch 9 [REP8-013] shows that the Applicant intends for the arbitration process to be regulated by a detailed procedure, entraining decisions as well as disputes, binding the SoS as a decision-maker alongside other public bodies and authorities, setting the timescales for processes, documentation to be provided (down to length, font style and size) and providing a basis for awards of costs.
- Because the SoS is proposed to be subject to this procedure (see for example Art 5(11) which specifically attaches the arbitration provisions to SoS decision making on transfer of benefit applications), the Applicant then proposes that it is no longer appropriate for the SoS to be the default appointer of an arbitrator. This role is proposed to be provided to the Centre for Effective Dispute Resolution. Whilst the ExA sought assurances that this body is both qualified and willing to act in this capacity (and was reassured that it is), there is no precedent for its use for this function in a DCO.
- Reference to Sch 11 and 12, the Generation Assets and Export Cable Systems DMLs show the intention to subject detailed determinations by the MMO to the arbitration process, by providing arbitration as a detailed form of quasi-appeal (in addition to an actual appeal process that is also provided and considered further below), a significant departure from the established practice for Marine Licences in general, where Parliament under the MACAA2009 did not provide any equivalent process.

11.4.12. In the view of the Applicant, these departures are necessary, on the basis that MPO Sch 1 Para 42 as evolved in energy NSIP DCO practice is almost devoid of procedural detail. However, on challenge by the ExA, the Applicant was unable to provide any compelling argument as to actual, historical instances of harms occasioned to undertakers or to project delivery, due to the absence of specification around and limited nature of the arbitration process found in most made Orders.

11.4.13. The MMO [REP3-078][REP4-031][REP5-062][REP5A-003], TH [REP3-071] and NE objected to the detailed arbitration provisions. The basis for their objection was in summary as follows.

- As statutory advisory bodies, regulators and decision makers, they were required to make decisions within the framework of powers provided to them and duties placed on them by their relevant legislation. They noted that legislation had generally not made such powers and duties subject to arbitration. They strongly distinguished between the circumstances of a genuine 'difference', which they agreed was arbitrable and emerging from a statutory or regulatory decision-making, which they said generally was not and in this instance should not be arbitrable.
- They identified themselves as specialist bodies, appointed under legislation to discharge functions relying on particular bodies of technical and specialist knowledge: public interest expertise required to be held by them by Parliament and not necessarily held by others. Arbitration in such circumstances would hand decision making from

the intended expert body into the hands of a likely generalist, with partial or perhaps no relevant qualifications and experience.

- They noted that in establishing them as statutory bodies, Parliament had given due consideration to the question of whether there should be a system of appeal against their decision-making. If none such existed, that was the will of Parliament and could be taken to strike an appropriate balance between the rights of the regulated and the general public interest. They were of course as a matter of general provisions of public and administrative law, amenable to judicial review. Judicial review provided the appropriate level of recourse but should not be substituted or added to unless Parliament so intended.
- They did not consider that it was appropriate for relevant technical specialist decisions under a DCO and/ or relevant legislation where their expertise was called for, to be subject to factual 'overturn' in a quasi-appellate process before a single arbitrator who was not required to be a technical specialist or to operate within relevant legal or policy frameworks.
- They highlighted the detailed nature of the proposed provisions.
- They highlighted the unprecedented nature of the proposed provisions.

11.4.14. The Applicant responded to these concerns by seeking to maintain its position that there was a justification for the changes to practice that it sought.

#### **ExA Response**

11.4.15. The ExA has considered the case for what amounts to a substantial extension to the remit of arbitration as provided for under the MPO and then developed over a decade of made Orders in energy consenting. The ExA is concerned that the proposed changes are more than necessarily complex and specified for what should be a rarely-used procedure. It considers that the Applicant is seeking to establish a quasi-appellate procedure that would allow arbitration to review nearly all decisions capable of being taken under a DCO. The boundary between arbitration in this form and relevant provisions for appeals then becomes unclear and (as is addressed below), provisions for appeals become to a substantial degree reiterated by provisions for arbitration.

11.4.16. It is notable that the proposed expansion of the remit of arbitration is so substantial that it subjects decision-making by the SoS to arbitration, which in turn has the effect of removing final decision-making from a public office bearer accountable to Parliament, and places it in the hand of an arbitrator who is not even to be appointed by the SoS. Whilst superficially, this change remedies an apparent instance of conflict of interest between the role of the SoS as the appointor of an arbitrator and as an interested party in an arbitration, in practice it does so at the price of establishing a substantial defect of public accountability, what might be described as a 'democratic deficit', across the entirety of decision making under the DCO. The ExA on balance considers that the theoretical slight harm arising from a potential conflict of interest between the SoS' role as appointor of an arbitrator and party to an arbitration would be substantially outweighed by the harm arising from

the loss of public accountability in DCO decision making that would flow from the arbitration model proposed in this dDCO.

11.4.17. The ExA also agrees with the MMO, TH and NE that the arbitration provisions as sought by the Applicant would have the effect of rendering nugatory the intention of Parliament that certain classes of decision should be taken by duly appointed expert statutory bodies. The provisions would enable decisions that are currently taken by such bodies to be taken by an arbitrator who may not be appropriately expert in relevant subject matters, from the habits or habitats of marine or avian species through to the safety of vessels at sea. The ExA agrees that where Parliament has provided for appeals or judicial reviews against the decisions or actions of such bodies is where a DCO should normally (if required) provide equivalent rights. If Parliament did not provide such rights, then it is not normally appropriate for an individual DCO to provide them by innovation, unless there is a very clear, public interest case for it to do so.

11.4.18. The ExA in considering the proposed provisions has applied what is sometimes described as the mischief rule<sup>226</sup>, where in interpreting a statute, a court asks itself:

- what was the law before the making of the relevant statutory provision;
- what was the mischief and defect for which the law did not provide;
- what remedy Parliament has already provided; and
- the true reason for that remedy?

The court applies these tests *pro bono publico* – in the public good.

11.4.19. Although that rule applies principally to the interpretation by a court of a statute already in force, persuasively it also assists in the consideration of a draft statutory provision not yet in force, helping the decision-maker to consider whether it is on balance necessary and beneficial in the public good.

11.4.20. The law (and practice) on arbitration before the preparation of the dDCO was clearly set out in the MPO and in multiple energy decisions derived from it, in which arbitration has a simple and limited role and the SoS appoints the arbitrator and therefore the process retains public accountability. The MPO arbitration provision was the remedy that Parliament provided and, whilst in this context that was capable of evolution and has evolved, instances of evolution have been limited to establishing the principle that an arbitrator is appointed by a publicly accountable SoS, not by a self-regulating professional body or by an unaccountable private person. The 'public good' principle has been honoured by the development in practice that has occurred. Finally and most persuasively, the Applicant in requesting these substantial changes has not been able to provide evidence of any substantial 'mischief or defect' for which the existing law and practice does not provide.

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<sup>226</sup> See Heydon's Case [1584] 76 ER 637 3 CO REP 7a

11.4.21. On that basis, the ExA having asked itself why the substantial change in the scope and effect of the arbitration provisions as proposed is necessary and what public benefit the proposed changes would bring, the responses appear to be that it is not necessary to remedy any known mischief and that no public benefit would flow from it. Rather the reverse: the public would lose the reassurance that a publicly accountable SoS is the ringmaster of subsidiary decision-making under the DCO.

### **ExA Conclusion**

11.4.22. For these reasons, the ExA proposes as follows.

- The DCO provisions for arbitration should be simplified, placing them back into general drafting conformity with well-precedented provisions in other OWF made Orders, removing duplicated procedures and overlap with the appeals provisions and reinstating the role of the SoS as the appointor of any arbitrator.

### **Appeals generally**

11.4.23. It will be clear from the above that there is some considerable confusion and overlap in the Applicant's preferred draft dDCO [[REP8-013](#)] between provisions enabling a quasi-appeal to an arbitrator and provisions establishing a direct appeal to an appointed person, to consider a formal determination or failure to decide under relevant provisions of the Order. The dDCO had become to a significant degree overburdened with detailed procedures seeking to manage a wide range of decision-process risks that the majority of made Orders either do not control, or else control in clear and much simpler terms. A benefit of the ExA's conclusion above is that the remit of arbitration becomes more clearly defined that some of this confusion is addressed.

11.4.24. However, the dDCO still provides for appeals additional to arbitration in three further circumstance. It provides for:

- an appeals procedure in relation to decisions on the discharge of requirements in Sch 10 (now Sch 9);
- an individual appeals procedure in relation to decisions by the MMO in Parts 5 of the Generation Assets DML in Sch 11 (now Sch 10) and the Export Cable System DML in Sch 12 (now Sch 11); and
- a separate appeals process in Sch 14 (proposed to be deleted) which aims to provide for circumstances where the undertaker wishes to appeal against a decision by the SoS on the transfer of benefit of the Order under Art 5.

Each of the three appeal types above is to a different person and has different procedures.

11.4.25. The specific appeals provisions in the DMLs became the subject of substantial concerns from the MMO and they are addressed further below.

- 11.4.26. This leaves a general need to consider the value and effect of what are still more complex appeal processes than have been deemed necessary by SoS decision-makers in relation to most energy made Orders.
- 11.4.27. The ExA has no concerns in principle about the provision of an 'appointed person' appeal process to address appeals against or non-determinations of decisions under requirements. Such processes are normal and provide for the almost inevitable circumstances in a major development where a discharge application decision is either late or (for some reason) deemed by the undertaker to be inappropriate. A mixed pattern of mechanisms including the adoption into a DCO of TCPA1990 s78 appeals and/ or bespoke appeal mechanisms (BAMs) specific to the needs of the industry sector or case can be found across a wide range of made Orders to deal with these circumstances. The remaining question in mind is whether, discounting the DML provisions that are dealt with separately below, an Order for a relatively small scheme needs two different sets of appeal provisions?
- 11.4.28. In ISH9 the ExA expressed concerns about the scope of the arbitration provisions (as then scoped) extending to cover decision-making by the SoS, especially in relation to transfer of benefit under Art 36.
- 11.4.29. The Applicant's most recent EM [[REP8-015](#)] makes clear that (despite the fact that it does not cite an Article in respect of which its provisions apply) Sch 14 (as was) is intended to provide an appeal process to cover decisions on transfer of benefit by the SoS. The Appeal would be to a person appointed by the Law Society. The EM makes clear that this provision is intended to operate in such circumstances if the ExA were to find that an arbitration would not be appropriate. On that basis, the ExA has viewed it as an alternative provision: to be retained if the SoS is excluded from the scope of arbitration, but to be deleted if not.
- 11.4.30. The more substantial appeal provisions in Sch 10 (now Sch 9) apply to decision-making pursuant to requirements 9, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28 and 29 in Part 3 of Schedule 1. In common with a large number of made Orders, they provide for an appeal against the discharging body for a refusal of agreement or approval, the terms of any condition of agreement or refusal, a non-determination and a decision to request additional information that the undertaker deems to be unnecessary for the decision-maker. The SoS is the destination for these appeals and appoints a person to determine them.
- 11.4.31. The SoS is placed under strict time obligations to appoint the appointed person and notify the parties to an appeal 'as soon as is practicable after receiving the appeal documentation, but in any event within 10 business days of receiving the appeal documentation' (Sch 10 (now Sch 9) Para 3 (2) (c)). This time requirement on the SoS is not typically found in such provisions. The EM [[REP8-015](#)] provides no insight as to why it was considered necessary to subject the SoS office to these timescales.



## **ExA Response**

- 11.4.32. The ExA has reviewed the Sch 14 appeal provisions. On the basis that the scope and complexity of arbitration provisions under Art 36 is proposed to be reduced to provide general conformity with recent made OWF Orders and Sch 9 is therefore proposed to be deleted, the ExA is content that Art 5 decision-making on transfer of benefit should be subject to arbitration (as indeed equivalent powers under most made Orders are) in genuine cases of 'difference'. The scope to use an arbitration as a quasi-appeal (as distinct from a dispute resolution mechanism) is removed. In such limited circumstances, the ExA has not recommended exclusion of Art 5 and the SoS' decision on transfer of benefit from the scope of arbitration.
- 11.4.33. It follows therefore from the position set out in the EM [[REP8-015](#)], that the Applicant would therefore acknowledge Sch 14 as unnecessary. On that basis, the ExA proposes that it should be removed, noting again that in doing so, a further layer of complexity is removed for which the Applicant provided no compelling argument, and recourse to a further (and in the context of NSIP decision-making, untested) decision-maker in the form of the Law Society is also removed.

## **ExA Conclusion**

- 11.4.34. For these reasons, the ExA proposes as follows.
- The DCO provisions for appeals against decisions should be simplified, placing them in general conformity with precedented provisions in other OWF made Orders, removing duplicated procedures and overlap with the arbitration provisions.
  - Sch 14 appeals to the Law Society against SoS determinations of transfer of benefit applications are not necessary and this procedure should be deleted.

## **MMO decision timescales, deemed permission and appeals**

- 11.4.35. As is common with most NSIP OWF made Orders, the Applicant's preferred draft dDCO [[REP8-013](#)] through the DMLs provides that a wide range of pre-construction plans and documents must be submitted to and approved by the MMO before the commencement of licensed activities. This dDCO is innovative in that it:
- includes DMLs conditions 15(3) and 14(3) which require the MMO to make a decision on such submissions in precisely 4 months;
  - generally deems an approval in default of a decision by the MMO (conditions 15(4) and 14(4)) (non-determination); and
  - provides a right of appeal to the SoS if the MMO decision is to refuse (15(5) and 14(5)).
- 11.4.36. The context for these provisions is one of an evolving dialogue between the Applicant and the MMO about the timescales for such decisions. The Applicant considered that greater specification of practice was warranted. The MMO did not and wished to maintain practice equivalent to that

reflected in precedent made Orders for OWF developments. The MMO maintained throughout the Examination that a strictly limited (as opposed to an expected) timescale of four months for its consideration and approval of pre-construction plans and documentation under the DMLs was not sufficient. The Applicant strongly advocated for strict timescales.

- 11.4.37. It is important to note that the innovative inclusion of a strict four-month time limit (as distinct from a general four-month expectation), deemed consent in circumstances where the time limit was not met and appeal provisions applicable to MMO decisions did not form part of the dDCO as initially applied for. Nor are these features found in most iterations of the dDCO placed before the ExA for the majority of the Examination period: they are not included in the application version of the dDCO [APP-022] or in any iteration of the dDCO up to D5B. They were formally introduced by the Applicant late in the Examination – fourteen days before its end – at D6 [REP6-068].
- 11.4.38. It should also be noted that these proposals were introduced after ISH9 (the final oral hearing on the DCO) and after the publication of the ExA's own commentary on the dDCO. It follows that they were not subject to oral Examination and nor did the ExA have an opportunity to draw attention to them and their implications in its own consultative processes including its commentary on the dDCO.
- 11.4.39. The D6 update to the EM [REP6-071] provides only the most limited justification for this major and apparently unprecedented change, explaining that *'[d]uring the Examination [these conditions were] amended to require the MMO approve any details within four months. Any request for approval not determined within the time limit will be deemed approved, unless it applies to mitigation for a European site, and the undertaker may appeal any refusal or non-determination using the procedure set out in Part 5.'*
- 11.4.40. Consultation between the Applicant and the MMO on what the MMO refers to as a *'case-specific approach regarding approval periods for pre-construction plans and documentation'* had been ongoing since D4. At D5A the MMO flagged a concern about time limit proposals emerging in its conversations with the Applicant, identifying that it and its advisors *'need an appropriate timeframe to analyse technical information, consult and make informed judgements and decisions. In most circumstances a 4 month pre-construction submission date is unrealistic and potentially counterproductive.'* ([REP5A-003] at para 1.2.11). However, the text of the Applicant's proposed amendments was not available to the ExA, IPs or OPs at that time.
- 11.4.41. The MMO made clear that it had endeavoured to remain as flexible as possible in relation to the meeting of developer requests and would prefer to do so on a negotiated and bespoke basis. It suggested to the Applicant that formalising timescales could lead to a reduced flexibility in the deployment of its resources, reducing its ability to prioritise its obligations. In relation to the discussions that were taking place between

the Applicant and the MMO before D6, the MMO took the view that if a decision timescale was to be formalised, this should be set at 6 months [REP5A-003]. This was raised orally at ISH9 and the ExA indicated there that parties should have regard to the underlying justification for expedition with NSIP casework, in the context of which 6 months appeared to be a very long time. However, it is fair to note that the ExA had not seen the Applicant's detailed proposal at this point.

- 11.4.42. On reviewing the Applicant's detailed D6 proposal to amend the dDCO at its first available opportunity (D7), the MMO took the view that the addition of the proposed deemed approval process was *'grossly inappropriate and advise that this fundamentally goes against the parliamentary powers relayed through the Marine and Coastal Access Act 2009 (MCAA 2009). The provision in effect seeks to render the MMO's regulatory role in the competent discharge of conditions redundant and is not commensurate with current marine licensing practice'* ([REP7-035] at paragraph 3.3.2). Identifying that the proposed deeming provision combined with a four-month limit could result in rushed consideration of the appropriateness of mitigation around significant environmental effects and navigation safety risks, the MMO observed that *'[i]n this respect the deemed approval of such documents after a set timescale is completely unacceptable...'* (at paragraph 3.3.3).
- 11.4.43. Turning to the proposed appeals procedure, the MMO made the following observations:
- *'...the provision appears to be without justification or rationale from the Applicant and the MMO opposes it for much of the same explanation given with respect to [...] the deemed approval process' (paragraph 3.4.2);*
  - *'the MMO is not aware of an occasion whereby any dispute which has arisen in relation to the discharge of a condition under a DML has failed to be resolved satisfactorily between the MMO and the Applicant, without any recourse to an 'appeal' mechanism' (paragraph 3.4.3); and*
  - *'the MMO cannot see any reason as to why it should be subject to a provision for which there is no precedent and which appears completely unnecessary...'* (paragraph 3.4.5).
- 11.4.44. The MMO highlighted its ongoing commitment to effective liaison with applicants on such approvals, the absence of any significant concerns about its performance with these, inconsistency with general law and practice applicable to Marine Licences (other than DMLs) and the presence of recourse to judicial review in the rare circumstance that an Applicant was aggrieved by a decision-making process.
- 11.4.45. The Applicant highlighted the basic need for certainty in programming construction combined with the high priority that should be accorded to NSIP related pre-construction decision making. It urged retention of a 4-month period followed by deemed consent or the right of appeal to the SoS for an express refusal. It acknowledged the concern that a deemed consent after four months was not appropriate for matters relating to mitigation relevant to the integrity of a European site and exempted such

documents from its proposed deadline. However, it declined to make a general change to a 6-month timescale to accommodate the MMO's concerns.

### **ExA Response**

11.4.46. The MMO is placed under considerable programme pressure by major development such as NSIP energy DML pre-construction decision making. However, NSIP development is, by definition, of high priority as nationally significant infrastructure. Such decisions should be taken in a timely and prioritised manner.

11.4.47. The ExA broadly agrees with the MMO that bespoke discharge timings should be capable of agreement between the MMO and an undertaker / beneficiary of a DML in order to ensure the best use of combined resources, within a general timescale of four months, as provided for in many precedent made Orders. The ExA broadly agrees that this timescale is appropriate to the task in hand. It considers that the MMO suggested alternative of a specified 6-month timescale would on balance be too long and disproportionate, having regard to the fact that an NSIP examination is time-scaled to 6 months.

11.4.48. The ExA has reviewed 12 equivalent made Order DMLs for OWFs and has found the following timescales and procedures:

- Burbo Bank Extension – Schs 2 and 3 DMLs, conditions 11 – at least 4 months *'except where otherwise stated or unless otherwise agreed in writing by the MMO'*.
- Hornsea Two – Schs 8 – 11 DMLs, conditions 10 – drafted equivalently to Burbo Bank Extension.
- East Anglia THREE – Schs 10 - 15 DMLs – conditions 14 (Schs 10 – 13) and 7 (Schs 14 and 15) – drafted equivalently to Burbo Bank Extension.

In conducting this review, it notes that none of the 12 DMLs made in those cases go any further than the provision in Sch 11 condition 15(1) and Sch 12 condition 14(1), establishing a general requirement for the submission of documents *'at least four months prior to the intended commencement of licensed activities'*. None deem consent if a decision is not made in precisely four months or any other period. None provide a right of appeal to the SoS from a decision by the MMO.

11.4.49. The ExA has also compared the drafting in this dDCO with practice in Marine Licence decision making under MACAA2009, where the MMO is the licensing authority and there is no DML. In such cases, there is no provision for a deemed consent in relation to pre-construction plans and documents after a fixed timescale. Nor is there any provision for an appeal to the SoS or to any other person. It follows that the introduction of these apparently unprecedented provisions would depart substantially from the general practice of marine licensing established by Parliament, SoSEFRA and the MMO.

- 11.4.50. PA2008 and the drafting of DCOs do provide substantial powers and opportunities to amend existing legislation and practice, including that relating to marine licensing. Practice under PA2008 includes tight timescales for a number of processes that were specifically provided by Parliament and the SoSHCLG to ensure that an appropriate focus on nationally significant development is maintained. Examinations proceed in 6 months. Reports of recommendation by ExAs are completed in 3 months. SoS decisions are made in 3 months. There is no reason in principle why the MMO should not be held to a tighter timescale for decision making than it currently is, as long as there is an evidenced basis for the request and consistency of process and resourcing between projects.
- 11.4.51. However, the ExA takes the view that such changes should not be made capriciously or on the basis of special pleading. They should not be made at what is close to the last possible moment in an Examination prospectively excluding the opportunity for IPs and OPs to constructively engage. They should not be made without clear evidence of a problem requiring this order of change to well established practice as the solution. They should not be made without adequate reasons supporting the detail of the changes proposed, for example that there were specific failures in practice by the MMO and associated adverse outcomes and unjustified costs to business. The solutions proposed should be proportionate to an identified and evidenced need for change. Desirably, they should be capable of application to all equivalent cases and not just arise as a response to one case.
- 11.4.52. Furthermore, even if submitted on a timely and evidenced basis, the Examination of an individual NSIP application would not appear to be the best place to take forward what amounts to a strategic case for systematic practice reform. Such a case would best be pursued alongside other developers, through industry fora and through constructive dialogue with the MMO and DEFRA as its sponsor Department of State.
- 11.4.53. To support changes proposed by the Applicant in the D6 dDCO [[REP6-068](#)] on any less of a basis could invite affected interests to subject the SoS' own decision to make such an Order to judicial challenge. In this respect, having regard to the lack of supporting evidence for them, the ExA considers that the time limit, deemed consent and appeals proposals placed before the SoS by the Applicant at D6 and included in the D8 preferred dDCO [[REP8-013](#)] are unreasonable.
- 11.4.54. There is a discussion to be had between the MMO, the OWF and other major offshore development community members about timescales and processes for decision-making on the approval of pre-construction plans and documents in marine licensing. However, to seek such radical changes as this Applicant has on this occasion that would have the effect (if approved) of privileging and ring-fencing public resources for one project to the likely disbenefit of others not so provided for appears to be wrong as a matter of principle.

## **ExA Conclusion**

For these reasons, the ExA proposes as follows.

- References in the DMLs to a four-month decision time limit for pre-construction documents and plans, to deemed consent in the absence of a decision and to appeals against MMO decisions should be deleted and the DCO drafting on these matters should be returned to that submitted with the application version dDCO.

## **Navigational Safety, Material change and the SEZ**

- 11.4.55. Chapter 5.2 above provides a detailed explanation of substantial maritime stakeholder concerns about navigational safety issues. The Applicant's initial response to these was that they did not require any change to the design of the Proposed Development or to the drafting of the dDCO. However, as described in process and content terms in Chapters 1, 2 and 4 above, a material change was prepared by the Applicant at the approximate mid-point of the Examination, which had the effect of introducing and securing the SEZ as a means to improve navigational safety by providing a defined area of sea-room within the Order land that would be maintained free of structural obstructions to shipping.
- 11.4.56. As is recorded in Chapter 5.2 above, maritime stakeholders remained concerned that the proposed SEZ was not demonstrated to be sufficient to meet the necessary policy objectives: in summary to reduce navigational risk consequent on the Proposed Development to ALARP and to mitigate and minimise obstruction to shipping. The examination of that matter remained focussed on matters of design and assessment. Submissions from maritime stakeholders did not address the drafting of the Order on this point in any detail, in the main because their position at the end of the examination remained that the SEZ secured in the Order was not sufficient.

## **ExA Response**

- 11.4.57. The Applicant's proposed material change inclusive of a SEZ providing for navigational safety is secured in Requirement 6 of the Applicant's D8 DCO [[REP8-013](#)] and further in Conditions 5 and 4 of the DMLs (Schedules 10 and 11<sup>227</sup> respectively). It is the ExA's view (for reasons set out in Chapter 5.2) that the SEZ is not sufficient to secure that navigational risk has been reduced to ALARP. A further navigational risk assessment and further WTG array area changes consequential upon that would be required to achieve that objective, but these have not been proposed by the Applicant or examined.

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<sup>227</sup> The SEZ is required to be implemented in both DMLs. Although it principally safeguards sea room for navigation by excluding WTGs from a defined sea area within the Order land (which is a matter for the generation assets DML in Sch 10), the offshore substation platform is a generation asset provided for in the DML in Sch 11, but is also a work that obstructs sea room and so is required to be excluded from the SEZ.

11.4.58. It follows that it is the ExA's view that the SEZ currently secured in the dDCO is not sufficient to provide for policy compliance on navigational risk. The ExA has not proposed to delete the definitions of the SEZ in Art 2 of the dDCO or Part 1 para 1 of the DMLs at Schs 10 and 11. Nor has it proposed to delete the security for the SEZ in Requirement 6 of DCO and Conditions 5 and 4 of the DMLs: those provisions can all be found in the DCO in Appendix D. However, that does not mean that in the view of the ExA those provisions are adequate to enable the Order to be made. The ExA has determined to leave those provisions in place in the appended DCO as a matter of record, so that the SoS is clear about the progress that had been made up to the point of closure of the Examination.

11.4.59. The ExA also concludes that, whilst the precise definition of the sea area for inclusion in the SEZ secured in the DCO and DMLs would not in the ExA's view be sufficient to enable policy compliance, it does remain possible that another equivalent mechanism aiming to provide appropriate navigational safety risk control additionally to or instead of the SEZ (referred to below as an 'additional navigational risk measure') could possibly be defined that might on testing enable additional navigational risk as a consequence of the Proposed Development to be assessed as reduced to ALARP and so bring the Proposed Development towards policy compliance. If that were to be done, the drafting in the appended DCO identified above could provide a reasonable starting point for the security for such an additional navigational risk measure.

11.4.60. This then begs the following questions:

- if an additional navigational risk measure could potentially have been prepared, why has the ExA not asked the Applicant to have one prepared; or alternatively
- why has the ExA not proposed that an additional navigational risk measure should be prepared post consent, secured by way of an additional Requirement or DML Conditions?

11.4.61. On the first of these questions, the ExA did not ask the Applicant to prepare an additional navigational risk measure during the Examination as a consequence of the elapse of time and the expiry of the 6-month statutory deadline for examination set out in PA2008 s98(1). Despite the fact that (as outlined in Chapter 1 and Appendix A) the ExA had identified the prospective need for navigational risk controls at ISH2 on the second day of the Examination, the Applicant did not agree the need for such controls or start the preparation of the SEZ until hearings held in February 2019. The proposed change then advanced required a significant body of technical appraisal to support it, set out in the NRA Addendum. This (as is described in Chapter 5.2) is a process that includes qualitative evaluation of expert opinion on risk and the process to draw out that opinion takes time. On the basis that the Applicant and the ExA agreed that a change to the design of Proposed Development was a material change to the application before the ExA, it was then necessary for the proposed changes to be consulted upon in the manner and for the timescales set out in Planning Inspectorate Advice Note 16

(AN16)<sup>228</sup>, which took the Applicant until D8 in the Examination to complete. It was not possible within the constraint of a 6-month examination for the Applicant to then prepare and submit an additional navigational risk measure over and above or instead of the SEZ, taking account of the further concerns raised.

- 11.4.62. On the second of these questions, the ExA has not proposed changes to the dDCO to provide for the completion of a further navigational risk assessment and securing of an additional navigational risk measure after the making of the Order. This is because it is the ExA's view that the provision of navigational safety reduced to ALARP is a matter on which the acceptability of development in principle turns. It is driven by compliance with PA2008 s104(3) and NPS and MPS policy. These provide that SoS must decide the application in accordance with any relevant national policy statement consent and so, to the extent that an application does not comply with relevant policy and that policy identifies that non-compliance is a matter on which a decision should turn, development consent should be withheld. Where the effect of statute and policy are that development consent should be withheld, in the ExA's view, any additional navigational risk assessment work would require to be completed, consulted upon and assessed before a decision is taken on the principle of development consent. It follows that an additional navigational risk measure is not a matter than can be provided for by requirement or DML conditions in a DCO, for preparation and delivery after consent has been granted.
- 11.4.63. Additionally to this, NPS EN-1 para 4.1.7 (as now underpinned by the NPPF at paragraph 55 and Planning Practice Guidance<sup>229</sup>) establishes the framework within which the ExA and the SoS can test whether a requirement or condition could have been included to provide for an additional navigational risk measure to be prepared after a decision to grant the DCO. The ExA has concluded that it could not, because it does not meet tests 3, 5 or 6 in the 'six tests' for planning conditions.
- In terms of test 3 (*'relevant to the development to be permitted'*), a condition for the post-consent approval of an additional navigational risk measure that has not been examined would not be relevant to the development to be consented, because it would entail going beyond what was applied for or examined following the material change process. It would in effect be a further material change. It would not have been assessed in the ES and could fall outside the Rochdale envelope and, on the Applicant's own evidence ([[REP2-020](#)] at section 8, paragraph 36), at some not yet clearly determined point the extent of such a change could also make the project economically unviable.
  - In terms of tests 5 (*'precise'*) and 6 (*'reasonable in all other respects'*), a post consent additional navigational risk measure would not be capable of being precise or reasonable. It is by no means

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<sup>228</sup> [Planning Inspectorate AN16](#), March 2018

<sup>229</sup> [Planning Practice Guidance](#) (23 07 2019) at paragraph 003 Reference ID: 21a-003-20190723



certain that a further NRA could demonstrate the achievability of ALARP for an economically feasible project. It is therefore not known what additional sea area would need to be included in or subject to additional navigational risk measure and so the environmental effects of such a change are not known; and hence it is not possible to conclude that such a requirement or condition would be reasonable in all other respects.

- In terms again of test 6, on the basis that a requirement or condition would be applied to a grant of consent in circumstances where the principle of policy compliant development had not been demonstrated, it could be argued that it would be *Wednesbury unreasonable*, because we have no evidenced means of knowing whether compliance with a condition in process terms (a further NRA) or design terms (an additional navigational risk measure) could achieve policy compliant development (navigation risk reduced to ALARP)<sup>230</sup>.
- As a matter of practicality also related to test 6 and reasonableness, because these matters were left by the Applicant to the second half of the Examination, substantive objections to the NRA Addendum and SEZ did not emerge in fully documented form until the final deadlines (D6 to 8) of the Examination. On that basis, the ExA had no opportunity to draft or consult on a requirement or condition and so to propose one without any ventilation through the Examination process would lead it into procedural error. Whilst it is theoretically open to the SoS to overcome this point by requiring the Applicant to consult on a further NRA and an additional navigational risk measure during the decision-making period, it appears that to do so in a three-month timescale would be impracticable.

11.4.64. In this regard, it should be noted that it is not a forgone conclusion that an acceptable additional navigational risk measure could be prepared. There is a necessary commercial judgement to be made here that only an applicant can make: what is the balance to be struck between the cost of development, its energy yield and any measures to secure navigational safety through the provision of additional sea room, which would tend to further reduce yield? Having struck that balance in its view, the Applicant would need to advance a new proposal for assessment.

11.4.65. The Applicant suggested at the outset of the Examination in ISH2 that a reduction in the available WTG array area in the Order land in the order of 50% as sought by maritime stakeholders at that time ([[REP1-104](#)] at fig.1, [[REP1-109](#)] at pg 14, [[REP1-129](#)] at pg 4, [[REP1-148](#)] at pg 46) would lead to the Proposed Development not being commercially viable ([[REP2-020](#)] at section 8, paragraph 36). At some point between the extent of the current SEZ (which the Applicant considers to be commercially viable but the ExA has found not to reduce navigational risk to ALARP) and a c.50% reduction (which the Applicant considers not to be commercially viable) there may or may not be a point at which an additional but commercially viable additional navigational risk measure could be assessed as reducing navigational risk to ALARP. The ExA has

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<sup>230</sup> See paragraphs 9.4.21 and 9.5.1 above.

not received any evidence that would entitle it to form a view about whether or where that boundary could be struck and so it has no basis from which to propose any amendments to the DCO that might provide for it.

### **ExA Conclusion**

11.4.66. For these reasons, the ExA proposes as follows.

- The ExA does not recommend any changes to the DCO that would enable a further NRA and an additional navigational risk measure to be prepared after approval, as in principle it considers that any such changes would be material changes that should be considered before a decision is made on the Order.

### **Drafting Issues Conclusions**

11.4.67. In summary terms, the ExA has proposed changes to the dDCO in Appendix D to address:

- arbitration provisions;
- appeals generally; and
- MMO decision timescales, deemed permission and appeals relevant to the administration of the DMLs.

These changes are itemised in Table 11.1 in Section 11.5 below and are all shown in Appendix D. The SoS should be aware that DCO changes relating to arbitration and appeals proposed here may require consideration alongside equivalent provisions and recommendations in other OWF draft Orders currently in decision to ensure consistency of approach.

11.4.68. The Applicant's proposed material change inclusive of a SEZ providing for navigational safety was secured in the Applicant's D8 DCO [[REP8-013](#)]. Whilst the ExA has not deleted the proposed security for the SEZ because it is clear that, if the Proposed Development were to be consented, some form of additional navigational risk measure would most likely be required, the current SEZ is not sufficient to secure that navigational risk has been reduced to ALARP. A further navigational risk assessment and further layout changes consequential upon that would be required to achieve that objective, but these have not been proposed by the Applicant or examined.

11.4.69. For reasons set out above, the ExA has not proposed changes to the dDCO to provide for the completion of a further navigational risk assessment after the making of the Order. In the ExA's view, any additional navigational risk assessment work requires to be completed and assessed before a decision is taken on the principle of development consent.

11.4.70. It follows that it is the ExA's recommendation that the SoS should not (and indeed cannot lawfully) make the Order in Appendix D until such time as:

- the Applicant has prepared a further navigational risk assessment in consultation with maritime stakeholders to the satisfaction of the MCA and associated with it set out such changes to the layout of the Proposed Development as may be necessary (an additional navigational risk measure), demonstrating that navigation risk can be reduced to ALARP; and
- those changes have been through an appropriate process of public and technical review.

## **11.5. CHANGES DURING AND AFTER EXAMINATION**

- 11.5.1. This section of the Report addresses all outstanding matters in respect of which there was discussion between the Applicant, relevant IP and OPs and the ExA at ISH7, ISH9, in the ExA Commentary and in written submissions about potential changes to the preferred dDCO, in a tabulated format. **Table 11.1** (below) sets out those provisions in respect of which the ExA has proposed changes to the Applicant's preferred Revision I dDCO submitted at D8 [\[REP8-013\]](#) in the DCO in Appendix D, in response to stated issues and for stated reasons. All of these changes should however be viewed as conditional: only for consideration by the SoS in circumstances where the SoS does not agree with the primary recommendation of this Report, that development consent should be withheld.
- 11.5.2. In addition to the matters set out in Table 11.1, the table of contents has been amended to address the removal of provisions. Typographic errors affecting paragraph formatting have also been corrected. These amendments are reflected in Appendix D.
- 11.5.3. If the SoS is minded to make the Order as set out in Appendix D, there is an important timing consideration that should be noted. Because the Applicant was making changes to the DCO up to the end of the Examination and as its own preferred draft Revision I dDCO was not submitted until D8 [\[REP8-013\]](#), it follows that IPs and OPs have not had a full opportunity to respond to the dDCO in its final form. For this reason, the ExA proposes:
- Any dDCO proposed to be made by the SoS should be consulted with the IPs and OPs during the decision period, comments received made available to the Applicant for comment and the resulting combination of matters taken into account, before the final decision.

(Report text continues after Table 11.1 on page 480.)

**Table 11.1: DCO Provisions Proposed to be Changed by the ExA<sup>231</sup>**

Provision	Examination Issue	Proposals
<p><b>Preamble</b></p>	<p>The basis for any non-application of Special Parliamentary Procedure in relation to open space land (PA2008 s132) must be included on the face of the Order.</p> <p>The ExA notes that s132(3) is recorded (non-application due to no loss of advantage) but proposes that s132(4B) in relation to temporary acquisition should also be recorded, as the CA and TP request includes temporary possession of open space land at Pegwell Bay Country Park.</p>	<p>Amend the end of the fifth paragraph to record:</p> <p><u>... and or that the order land is being acquired for a temporary purpose and that, accordingly, section 132(4B) of the 2008 Act applies;</u></p>
<p><b>Art 2 – Interpretation</b></p> <p><u>“Arbitration Rules” means the rules of procedure that govern a particular arbitration that takes place;</u></p>	<p>The DCO as drafted contains a substantial body of detailed ‘Arbitration Rules’. For reasons set out above from paragraph 11.4.4, the ExA proposes that the detailed arbitration provisions in the dDCO should be removed in favour of the more limited provisions typically found in made OWF Orders.</p> <p>The detailed ‘Arbitration Rules’ set out in draft Sch 9 are also proposed to be deleted from the</p>	<p>Delete the definition of ‘Arbitration Rules’ from Art 2.</p>

<sup>231</sup> **General Note to Table 11.1:** The SoS should be aware that DCO changes relating to arbitration and appeals proposed in this table may require consideration alongside equivalent provisions and recommendations in other OWF draft Orders currently in decision to ensure consistency of approach.

Provision	Examination Issue	Proposals
	<p>Order as over-detailed and superfluous and, on that basis, there is no need to define the term 'Arbitration Rules'. This definition should be deleted from the Order.</p>	
<p><b>Art 5 – Benefit of the Order</b></p> <p><b>Paragraphs (4), (former 5), (former 6) and (former 7)</b></p> <p>(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 <u>either—</u></p> <p><u>(a) a guarantee, which may be given by the transferring undertaker, in respect of the liabilities of</u></p>	<p>As drafted, Art 5 is the only provision in the Order which secures funding for the payment of compensation to persons with a claim under the CA and TP provisions. It does so on the basis that security is provided by a person who receives a transfer of benefit. No security is provided in the possible scenario that the Applicant elects to develop the authorised development directly. On reflection and with reference to recent made Orders, the ExA observes that the Applicant should also be subject to and provide the same security as a transferee of benefit.</p> <p>For these reasons, the ExA proposes changes to Art 5 in summary:</p> <ul style="list-style-type: none"> <li>• Amending Art 5(4) to make it subject to a new Art 42 (Funding) which is applicable to the Applicant as undertaker as well as any transferee of benefit;</li> <li>• Re-locating current Arts 5(4) (a) and (b), Art 5(5), Art 5(6) and Art 5(7) to a new Art 42</li> </ul>	<p>Amend Art 5(4) to provide that a transferee of benefit must put in place a funding arrangement to the satisfaction of the SoS under new Art 42.</p> <p>(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 <u>a funding arrangement to the satisfaction of the Secretary of State under Article 42.</u></p> <p>Relocate the provisions of Arts 5(4) (a) and (b), Art 5(5), Art 5(6) and Art 5(7) to a new Art 42 (Funding).</p> <p>Re-number provisions in Art 5 accordingly.</p>

Provision	Examination Issue	Proposals
<p><u>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</u></p> <p><u>(b) an alternative form of security, including a funding agreement between the transferring undertaker and the transferee or the transferee and a third party, for that purpose which has been approved by the Secretary of State.</u></p> <p><u>(5) 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</u></p>	<p>(Funding), where they provide security for a CA &amp; TP compensation fund guarantee.</p>	

Provision	Examination Issue	Proposals
<p><u>is payable and must be in such form as to be capable of enforcement by such a person.</u></p> <p><u>(6) Such guarantee or alternative form of security will have a maximum liability cap of £8,500,000.</u></p> <p><u>(7) 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.</u></p>		

Provision	Examination Issue	Proposals
<p><b>Art 5 – Benefit of the Order</b></p> <p><b>Paragraphs (3), (former 10) deadlines on the SoS and (former 11) application of arbitration and appeals provisions</b></p> <p>(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State must provide a response <u>within eight weeks of receipt of the notice.</u></p> <p>(10) The Secretary of State must determine an application for consent made under this article <u>within a period of eight weeks commencing on the date the application is</u></p>	<p>As drafted, in relation to a proposed transfer of the benefit of the Order, the article seeks to:</p> <ul style="list-style-type: none"> <li>• Impose a deadline on the SoS to respond to receipt of a notice (Art 5(3)); and</li> <li>• Impose a deadline on the SoS to determine an application (Art 5(10)).</li> </ul> <p>The D8 EM [<a href="#">REP8-015</a>] (commentary on Art 5) refers to similar wording being proposed in the draft Hornsea Three Offshore Wind Farm Order (an application that was undetermined at the close of this Examination) and to the need to define a procedure in the absence of a statutory procedure.</p> <p>The ExA notes the absence of a statutory procedure (including appeals) for transfer of benefit applications. However, such a procedure and deadlines have not previously been viewed as necessary or accepted by a SoS in a made Order. The ExA considers that whilst the SoS could reasonably be bound to respond to an application (3) and to determine it (10) 'as soon as reasonably practicable', a process or deadline inconsistent with other made Orders should not be imposed on the SoS in the absence of full consideration by the decision department of the</p>	<p>Amend Art 5(3) to read:</p> <p>(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State must provide a response <u>as soon as reasonably practicable.</u></p> <p>Amend Art 5(10) (now 5 (7)) to read:</p> <p>(10) The Secretary of State must determine an application for consent made under this article <u>as soon as reasonably practicable.</u></p>



Provision	Examination Issue	Proposals
<p><u>received by the Secretary of State, unless otherwise agreed in writing with the undertaker.</u></p>	<p>practical implications for such decision-making by the SoS in all equivalent NSIP casework.</p> <p>In response to the ExA's concern that any process and deadline should be practicable, the Applicant agreed to increase the Art 4(3) deadline on the SoS from 4 to 8 weeks but made no change to the Art 4(10) deadline on the SoS.</p> <p>The Applicant did not provide persuasive instances or examples of harm, delay or cost that it is seeking to control by the insertion of these deadlines on the SoS. The ExA remains of the view that it is important that the SoS makes carefully considered decisions on applications for transfer of benefit and in the absence of clear reasons for change, it is preferable that this drafting should not materially diverge from the approach in equivalent made Orders.</p>	
<p><b>Art 5 – Benefit of the Order</b></p> <p><b>Paragraph (former 6) limitation on the compensation guarantee</b></p>	<p>As drafted, where there is a transfer of benefit, the maximum extent of the guarantee for the funds for CA and TP compensation to be provided by the transferee is set at £8,500,000.</p> <p>This figure is derived from the FS, which explains that it is based on a valuation of all interests that might prospectively give rise to a claim for compensation, to be conservative and to contain</p>	<p>Amend Art 5(6) to read:</p> <p>Such guarantee or alternative form of security will have a maximum liability cap of £8,500,000 <u>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 by the Office for National Statistics.</u></p>

Provision	Examination Issue	Proposals
	<p>significant 'headroom' for rise in individual property values [<a href="#">REP3-011</a>].</p> <p>However, by fixing as opposed to indexing this figure, the dDCO does not address circumstances in which land values change over coming years in a manner unanticipated by the FS valuation. The ExA considers that this figure should be indexed.</p>	<p>The proposed index rate is prepared by the Office for National Statistics (ONS)<sup>232</sup>. However, a number of possible indexes are available. The SoS should consult the Applicant on the selection of an appropriate index before making the Order.</p> <p>Note that in order to give effect to a change seeking to apply this provision to the Applicant as undertaker as well as to a transferee of benefit under Art 5, this provision is now proposed to be relocated to new Art 42.</p>
<p><b>Art 5 – Benefit of the Order</b></p> <p><b>Paragraph (former 11) reference to 'arbitration' or 'appeal'</b></p> <p><u>(11) Where the Secretary of State is minded to refuse an application for consent made under this article and notifies the undertaker accordingly, or</u></p>	<p>The Applicant has provided for a reference to arbitration or appeal by the undertaker in circumstances where the SoS is minded to refuse an application for transfer of benefit.</p> <p>For reasons explained more fully from section 11.4 of this report above, the ExA proposes that the detailed arbitration provisions in the dDCO should be removed in favour of more limited provisions typically found in made OWF Orders.</p>	<p>Delete Art 5(11).</p> <p>Renumber Art 5(12) and below accordingly.</p>

<sup>232</sup> See [ONS UK National Balance Sheet Estimates](#):2018, Table 2: Compound annual growth rates of land and UK net worth, UK land excluding land held by households (on the basis that relevant land is commercial land).

Provision	Examination Issue	Proposals
<p><u>the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (10), the undertaker may refer the matter for determination in accordance with article 36 (arbitration) [appeal the decision in accordance with Schedule 14 (procedure for appeals)].</u></p>		
<p><b>Art 36 – Arbitration</b></p> <p><b>36.</b>—(1) Subject to <b>Article 39</b> (Saving provisions for Trinity House), any dispute or decision under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration <u>in accordance with the rules at <b>Schedule 9</b> of this Order</u>, by a single arbitrator to be agreed upon by the parties,</p>	<p>Provisions for Arbitration were substantially debated in the Examination.</p> <p>The Applicant proposes a formulation not found in previous made Orders for OWFs in which:</p> <ul style="list-style-type: none"> <li>• a wider than typical range of processes under the DCO (including decisions by the SoS) would be subject to arbitration; and</li> <li>• the default arbitrator in the absence of agreement is therefore required to be appointed by an independent person and not by the SoS.</li> </ul>	<p>Amend Art 36 to read:</p> <p><b>36.</b>—(1) Subject to <b>Article 39</b> (Saving provisions for Trinity House), any dispute under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the <u>Secretary of State</u>.</p> <p>(2) The procedure in sub-section (1) does not apply to the discharge of requirements under <b>Schedule 10</b>.</p>

Provision	Examination Issue	Proposals
<p>within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) <u>by the Centre for Effective Dispute Resolution</u>.</p> <p>(2) The procedure in subsection (1) does not apply to the discharge of requirements under <b>Schedule 10</b>.</p>	<p>For reasons explained more fully from section 11.4 of this report above, the ExA proposes that the detailed arbitration provisions in the dDCO should be removed in favour of more limited provisions typically found in made OWF Orders.</p>	
<p><b>New Provision</b></p> <p><b>Art 42</b></p>	<p>As is identified above in response to Art 5, the Applicant's preferred draft DCO did not provide any security for the guarantee of CA and TP compensation funds, in circumstances where the authorised development was developed by the Applicant itself as undertaker (without a transfer of benefit).</p> <p>New Art 42 has been inserted to provide the guarantee as proposed to be applicable to a transferee of benefit under Art 5 equally to the Applicant as undertaker and to a transferee of benefit under Art 5.</p>	<p>Insert new Art 42:</p> <p><b><u>Funding</u></b></p> <p><u>42. —(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 —</u></p> <p><u>(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;</u> <u>or</u></p>

Provision	Examination Issue	Proposals
	<p>This provision was not discussed with the Applicant during the Examination and so, if the SoS is minded to make the Order, the ExA proposes that the Applicant should be consulted on its drafting first.</p>	<p><u>(b) an alternative form of security for that purpose which has been approved by the Secretary of State.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p>
<p><b>Schedule 1 – Part 3 Requirements</b></p>	<p>The Applicant, NE and LPAs were in broad agreement that provisions relating to protected species, habitats and sites extending across the</p>	<p>Amend R13 to read:</p>

Provision	Examination Issue	Proposals
<p><b>Requirement 13</b></p> <p>13—o 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.</p>	<p>boundary between the marine and terrestrial environments require to be protected and secured by provisions in the DMLs and in an equivalent requirement.</p> <p>This is particularly relevant in respect of saltmarsh, which forms a complex and changeable matrix of both marine and terrestrial land.</p> <p>Taking this into consideration, the ExA proposes to amend the DCO to provide that this requirement secures the Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP) in the terrestrial environment (it is already secured the marine environment) to deal with saltmarsh under the jurisdiction of the LPA.</p> <p>Security for conservation measures for the ringed plover has also been added to this requirement, to ensure that it matches the equivalent security also provided offshore under Sch 11 (now 10) Condition 13 and Sch 12 (now 11) Condition 11.</p>	<p><b>13.—</b>(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.</p> <p>(2) <u>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.</u></p> <p>(3) <u>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.</u></p>
<p><b>Schedule 9 – Arbitration Rules</b></p>	<p>The Applicant’s preferred dDCO is innovative and departs from precedent in that it contains detailed arbitration provisions in Schedule 9. Whilst there are understood to be applications in Examination with equivalent drafting, there are</p>	<p>Delete Schedule 9.</p>

Provision	Examination Issue	Proposals
	<p>no precedents to this Sch in any made OWF Order.</p> <p>For reasons addressed more fully from section 11.4 of this report above, the ExA considers that the remit of the provisions in this Sch had extended to address decisions in addition to disputes and that it had become a form of merits appeal as distinct from a true arbitration on disputes. As drafted, the ExA considers that these provisions could significantly harm public interest, accountable and expert decision-making by the SoS and duly appointed government agencies under the Order. The procedures are also considered to be unduly complex, relevant to a very limited number and risk of disputes that would genuinely benefit from arbitration. The ExA proposes the wholesale deletion of these provisions from the DCO.</p>	
<p><b>Schedule 10 – Procedure for Discharge of Requirements</b></p>	<p>Having deleted Sch 9, subsequent schedules require to be renumbered. This is not a substantive change.</p>	<p>Renumber as Schedule 9.</p>
<p><b>Paragraph 2(c)</b> ...as soon as is practicable after</p>	<p>The Applicant proposes that the SoS should appoint a person to determine an appeal as soon as practicable and then makes this subject to a ten day time-limit, without making clear what</p>	<p>Amend the provision to delete the reference to 10 business days for the SoS to appoint an appointed person to conduct an appeal.</p>

Provision	Examination Issue	Proposals
<p>receiving the appeal documentation, <u>but in any event within 10 business days of receiving the appeal documentation</u>, the Secretary of State must appoint a person...</p>	<p>the consequences of failing to adhere to that time limit might be.</p> <p>The ExA takes the view that the SoS is not typically required to meet such specific deadlines and that the formulation 'as soon as is practicable' is sufficient.</p>	<p>...as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person...</p>
<p><b>Schedule 11 – Deemed Licence under the 2009 Act – Generation Assets</b></p> <p><b>(The Generation Assets DML)</b></p>	<p>Having deleted Sch 9, subsequent schedules require to be renumbered. This is not a substantive change.</p>	<p>Renumber as Schedule 10.</p>
<p><b>Part 1 – Interpretation Paragraph 1</b></p>	<p>For reasons set out in section 5.3 above, the ExA proposes to add DML conditions applying seasonal restrictions to safeguard spawning fish stocks. The following definitions need to be added to Part 1 in association with this change.</p>	<p>Add definitions:</p> <p><u>“Dover sole stock restriction” means a seasonal restriction on works to enable spawning by the Dover sole fish stock;</u></p> <p><u>“Downs herring stock restriction” means a seasonal restriction on works to enable spawning by the Downs herring fish stock;</u></p> <p><u>“Thames herring stock restriction” means a seasonal restriction on works to enable spawning by the Thames herring</u></p>



Provision	Examination Issue	Proposals
		<u>fish stock:</u>
<b>Part 4 – Conditions</b>  <b>Condition 13 – Pre-construction plans and documentation</b>	Typographical errors in paragraph numbering require to be corrected.	Typographical errors are corrected in Appendix D.
<b>Condition 15 – Pre-construction plans and documentation</b>	At D6, the Applicant introduced late proposed changes to the DMLs for: <ul style="list-style-type: none"> <li>• deemed consent by the MMO to submitted pre-construction plans and documentation after four months; and</li> <li>• a right of appeal from any express MMO decision to the SoS in any instance of refusal.</li> </ul> The changes sought are apparently unprecedented and imply a significant deviation from established practice in DML administration and marine licensing more generally. They are strongly opposed by the MMO.	For reasons more fully set out from paragraph 11.4.35 above, the ExA proposes deletion of drafting from part of sub condition (2), sub conditions, all of sub conditions (3), (4) and (5) and part of sub condition (6). Sub condition (6) is renumbered (3) and sub condition (7) is renumbered (4).
<b>New Condition 25 – Seasonal restrictions in respect of fish spawning</b>	To address matters raised by the MMO and discussed in section 2.3 above, the ExA proposes to add new Condition 25 to the DML to secure seasonal restrictions to protect spawning	Add new Condition 25:

Provision	Examination Issue	Proposals
		<p><b><u>Seasonal restrictions in respect of fish spawning</u></b></p> <p><u>25.— 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—</u></p> <p>(a) <u>1st November and 31st January (inclusive) (the ‘Downs herring stock restriction’);</u></p> <p>(b) <u>1st February and 30th April (inclusive) (the ‘Thames herring stock restriction’); and</u></p> <p>(c) <u>1st March and 30th April (inclusive) (the ‘Dover sole stock restriction’).</u></p> <p>(4) <u>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.</u></p>
<b>Condition 25</b>	Condition 25 (now 26) requires to be re-numbered.	Condition numbering is amended in Appendix D.
<b>Part 5 – Procedure for Appeals in the DML</b>	<p>Each DML contains detailed provision for the submission and determination of appeals against decisions made under the DML by the MMO.</p> <p>The principle of the right of appeal is strongly opposed by the MMO on the basis that it differs from the statutory position under MACAA2009</p>	For reasons more fully set out from paragraph 11.4.35 above, the ExA proposes deletion of the DML appeals provisions in Part 5 Sch 11 in their entirety.

Provision	Examination Issue	Proposals
	<p>marine licence decision making (where there is no such appeal), is apparently unprecedented in a DCO and serves no identified need.</p>	
<p><b>Part 6 – Arbitration in the DML</b></p>	<p>In addition to a right of appeal against MMO decision-making, each DML also contains a separate right to subject disputes on matters not otherwise provided for arising from each DML to arbitration. This provision also imports the detailed arbitration procedures in Schedule 9.</p> <p>In the ExA’s view, this is superfluous. The general arbitration provision in Art 36 of the Order applies (in the normal manner for OWF DCOs) to all differences under the Order and its Schedules that do not fall under an alternative provision. For reasons set out in relation to Schedule 9 above, the ExA proposes to remove the detailed arbitration procedures and to simplify the arbitration provision in the Order to a form that is broadly consistent with drafting that is well precedented in a number of previously made OWF DCOs. This change having been made, there is no remaining need for DML Part 5.</p>	<p>For reasons more fully set out from paragraph 11.4.35 above, the ExA proposes deletion of the DML appeals provisions in Part 6 Sch 11 in their entirety.</p>

Provision	Examination Issue	Proposals
<p><b>Schedule 12 – Deemed Licence under the 2009 Act – Export Cable System</b></p> <p><b>(The Export Cable System DML)</b></p>	<p>Having deleted Sch 9, subsequent schedules require to be renumbered. This is not a substantive change.</p>	<p>Renumber as Schedule 11.</p>
<p><b>Part 1 – Interpretation Paragraph 1</b></p>	<p>For reasons set out in section 5.3 above, the ExA proposes to add DML conditions applying seasonal restrictions to safeguard spawning fish stocks. The following definitions need to be added to Part 1 in association with this change.</p>	<p>Add definitions:</p> <p><u>“Dover sole stock restriction” means a seasonal restriction on works to enable spawning by the Dover sole fish stock;</u></p> <p><u>“Downs herring stock restriction” means a seasonal restriction on works to enable spawning by the Downs herring fish stock;</u></p> <p><u>“Thames herring stock restriction” means a seasonal restriction on works to enable spawning by the Thames herring fish stock;</u></p>
<p><b>Part 4 – Conditions</b></p> <p><b>Condition 11 – Pre-construction plans and documentation</b></p>	<p>This provision mirrors Part 4 Condition 13 in Sch 11. The same considerations generally apply. However, for reasons set out at paragraphs 5.3.127-8 and 5.3.134 above, the ExA considers it necessary to include a DML condition requiring the submission and approval of an updated version of the SMRMP prior to construction and once a final decision has been made on the</p>	<p>As above, typographical errors are corrected in Appendix D.</p> <p>In addition, new condition 11(8)(c) is added to the Export Cable DML (now Schedule 11):</p> <p><u>‘...a saltmarsh mitigation, reinstatement and monitoring plan, which must accord with the document certified as the</u></p>

Provision	Examination Issue	Proposals
	export cable route and installation methodology. Due to its geographical extent, this provision applies only to the export cable system DML.	<u>saltmarsh mitigation, reinstatement and monitoring plan and be updated to take account of the final export cable route and chosen installation methodology; ...</u>
<b>Condition 13 – Pre-construction plans and documentation</b>	<p>This provision mirrors Part 4 Condition 15 in Sch 11. The same considerations apply.</p> <p>For reasons more fully set out from paragraph 11.4.35 above, the ExA proposes deletion of drafting from part of sub condition (2), sub conditions, all of sub conditions (3), (4) and (5) and part of sub condition (6). Sub condition (6) is renumbered (3) and sub condition (7) is renumbered (4).</p>	As above, amend.
<b>New Condition 28 – Seasonal restrictions in respect of fish spawning</b>	<p>This provision mirrors Part 4 new Condition 25 in Sch 11. The same considerations apply.</p> <p>To address matters raised by the MMO and discussed in section 2.3 above, the ExA proposes to add new Condition 28 to the DML to secure seasonal restrictions to protect spawning</p>	Add new Condition 28, drafted as above.
<b>Condition 28</b>	Condition 28 (now 29) requires to be re-numbered.	Condition numbering is amended in Appendix D

<b>Provision</b>	<b>Examination Issue</b>	<b>Proposals</b>
<b>Part 5 – Procedure for Appeals in the DML</b>	<p>This provision mirrors Part 5 in Sch 11. The same considerations apply.</p> <p>For reasons more fully set out for Part 5 Sch 11 above, the ExA proposes deletion of the entirety of Part 5 Sch 12</p>	As above, delete.
<b>Part 6 – Arbitration in the DML</b>	<p>This provision mirrors Part 6 in Sch 11. The same considerations apply.</p> <p>For reasons more fully set out for Part 6 Sch 11 above, the ExA proposes deletion of the entirety of Part 6 Sch 12.</p>	As above, delete.
<b>Schedule 13 – Documents to be Certified</b>	Having deleted Sch 9, subsequent schedules require to be renumbered. This is not a substantive change.	Renumber as Schedule 12.
<b>Schedule 14 – Appeals Procedure</b>	<p>Sch 10 (now Sch 9) sets out a detailed procedure applicable to the discharge of requirements, which includes amongst other things a right of appeal to a person appointed by the SoS against refusal or requests for additional information.</p> <p>Sch 14 establishes a second and separate detailed procedure for appeals that is explained in the EM as principally intended to apply to SoS</p>	Delete the entirety of Sch 14.

Provision	Examination Issue	Proposals
	<p>decisions on the transfer of benefit under Art 5. However, as drafted, Sch 14 does not specify this clearly and could overlap in remit with Sch 10 and with arbitration under Art 36. The combination of appeal and arbitration provisions as drafted are also unduly complex.</p> <p>For reasons set out more fully in section 5.4 above, the ExA is clear that Sch 14 is not well precedented in previously made OWF Orders and nor are the reasons for its addition well-justified. The ExA does not consider it to be necessary and proposes that it is deleted.</p>	

(Table 11.1: Report continues on following page 480)

## 11.6. CONCLUSIONS

- 11.6.1. For reasons arising from Chapter 9 (Conclusion on the Case for Development Consent) the ExA recommends that development consent should be withheld. It follows that the ExA's starting point is that the dDCO reviewed in this Chapter and presented as Appendix D should not be made.
- 11.6.2. The ExA has endeavoured to present a dDCO in Appendix D that, if the SoS were to be minded to make the Order, could be made. However, significant caveats must be placed around that draft.
- It does not contain any provisions for the preparation and consultation of relevant bodies on a further NRA or additional navigational risk measure. This is because there was insufficient agreement between the Applicant and relevant stakeholders in the NRA process about the application NRA and the NRA Addendum developed to support the material change application for the SEZ. From this, it remains unclear whether the NRA Addendum assessments of risk provide a foundation stone and whether the location and extent of the SEZ a starting point from which to reduce navigation risk to ALARP. The solid foundations from which to progress further NRA work that would entitle this conclusion to be revised are not yet in place.
  - It does not provide for possible revisions to the SEZ that the ExA refers to above as an additional navigational risk measure and anticipates could flow from a further revised NRA should the Applicant continue to work on shipping and navigation issues. This is because in the ExA's judgement, due to the relationship between the NRA and the EIA process, the effects of the project on shipping and navigation and hence the nature and extent of an additional navigational risk measure need to be assessed with confidence. The effect on the Rochdale Envelope of any additional navigational risk measure needs to be adequately described (as that process has not happened in this Examination). In the ExA's view, any further NRA revisions and additional navigational risk measure are likely to be material changes and would require to be the subject of a development process that allows their proper test against policy. They are not changes that are capable of being resolved through the discharge of a requirement or a DML condition. The ExA has set out its clear view that such a requirement or condition would not meet the tests drawn in to NPS-EN-1 para 4.1.7 (as now underpinned by the NPPF at paragraph 55 and Planning Practice Guidance tests 3, 5 and 6<sup>233</sup>)
  - In forming this judgment, the ExA is conscious that it was the opinion of most shipping and navigation stakeholders at the outset of the Examination that an effective SEZ (or equivalent) would need to apply to approximately 50% of the offshore array area. The Applicant disagreed and furthermore made clear its view that, in such circumstances, it would no longer have a commercially deliverable project. If realisable changes to the Proposed Development in the

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<sup>233</sup> At [Paragraph: 003 Reference ID: 21a-003-20190723](#); 23 07 2019



form of an additional navigational risk measure are to be taken forward, this impasse must be resolved, engaging stakeholders through the NRA process. The ExA does not have data to hand from the Examination process to propose a resolution or even to form a judgment that an additional navigational risk measure is technically and economically achievable in a manner that could form a requirement or condition to be discharged post-consent. In such circumstances, the ExA does not consider that this is a matter that can be addressed by a requirement or a DML condition.

- It does not provide any security for amendments to the operating locations and conditions of Thames Pilots, which again might possibly flow from a further revised NRA and additional navigational risk measure (and it should be noted that any such may require to be the subject of separate legal agreements in addition).

11.6.3. Because the Applicant was still engaged in drafting substantive changes to the dDCO as late as D6, only 14 days before the close of the Examination, a number of changes were included in its preferred draft dDCO that were not the subject of oral Examination, were not considered by the ExA in its own Commentary on the dDCO and hence, despite the best endeavours of this ExA within its statutory deadline, have not been fully ventilated with IPs and OPs.

11.6.4. It further follows that in order to respond to concerns raised by IPs and OPs as late as D7 and D8, the ExA has made proposed changes to the drafting in Appendix D that have not been ventilated with the Applicant, IPs and OPs in the normal manner. Whilst a number of these changes do not materially change the DCO as applied for or as amended in Examination and so could properly be included without additional consultation, there are some material changes. In summary these include:

- Substantial changes, clarification of and limitations in scope to the arbitration provisions across the Order as a whole (Art 36), conforming them with generally established OWF DCO practice;
- Deletion of an innovative set of detailed arbitration procedures (Sch 9);
- Deletion of an innovative decision timescale for MMO decision making within the DMLs (Schs 11 and 12 (now Schs 10 and 11), itself introduced as a late change and for which insufficient reason had been provided by the Applicant;
- Deletion of an innovative deemed consent provision within the DMLs, which again had been introduced late and with insufficient justification by the Applicant;
- Deletion of an innovative appeal mechanism against MMO DML decision-making, which again had been introduced late and with insufficient justification by the Applicant; and
- Deletion of an innovative arbitration provision for the DMLs.
- Deletion of an appeal mechanism against SoS transfer of benefit decisions under Art 5 (Sch 14).

11.6.5. For these reasons, if the SoS is minded to make an Order based on that attached as Appendix D, the ExA recommends that it should be subject

to further consultation with IPs and OPs during the decision period, and that representations made should be taken into account by the SoS before a decision is made. Particular attention should be given to the implications of the Appendix D drafting on the operability of all relevant procedures by public authorities with decision making or discharge duties under the requirements or the DMLs, as these were not fully tested in Examination, either as drafted by the Applicant or as proposed to be amended by the ExA.

## **12. SUMMARY OF FINDINGS AND CONCLUSIONS**

### **12.1. INTRODUCTION**

12.1.1. This Chapter summarises the ExA's conclusions arising from the Report as a whole and sets out the primary recommendation to the Secretary of State (SoS).

### **12.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS**

12.2.1. In relation to section (s)104 of Planning Act 2008 (PA2008) the ExA concludes in summary that:

- the ExA's primary conclusion is that making the recommended draft Development Consent Order (dDCO) would not be in accordance with the NPS EN-3 policies relevant to shipping, navigation and ports because the Proposed Development as changed does not reduce additional navigational risk to As Low As Reasonably Practicable (ALARP), and this is policy in respect of which the SoS is under a duty of compliance (PA2008 s104(3));
- other policy relating to shipping, navigation and ports that is to be taken account of as important and relevant is also not complied with or has not adequately been taken account of in the design of the Proposed Development, including the national need for NSIP ports (NPSP) and the need to maintain safe navigation (MPS);
- whilst other NPS policy, relevant development plans and other relevant policy, all of which have been taken into account in this Report, are supportive of the Proposed Development, the effect of PA2008 s104(3) and the weight of the harms occasioned by the Proposed Development (PA2008 s104(7)) mean that development has a negative planning balance in policy terms;
- the ExA has had regard to the Local Impact Reports from KCC, DDC and TDC in making its recommendation;
- whilst the SoS is the Competent Authority under the Habitats Regulations, the ExA finds that there is no AEOI, and it has taken this finding into account in reaching its recommendation;
- in regard to all other matters and representations received, the ExA has found no important and relevant matters that would individually or collectively lead to a different recommendation to that below; and
- there is no reason to indicate that the application should be decided other than in accordance with the relevant National Policy Statements, NPS EN-1 and EN-3, noting that a decision in accordance with NPS EN-3 would be a decision to withhold development consent.

12.2.2. The ExA has considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of lands and rights required in order to implement the Proposed Development. It has found in general that in circumstances where the planning merits of the Proposed Development are not made out, that if the application is decided as per the recommendation of this Report, the powers requested should not be granted because they will not be required to enable the Applicant to

complete the Proposed Development. In addition, the ExA has concluded that if the application is decided as per the recommendation of this Report, there is not a compelling case in the public interest for the acquisition of the land and rights sought.

- 12.2.3. The ExA finds that the Applicant does have a clear idea of how it intends to use most of the land, and subject to consideration of means of uprating security to address potential change to the value of land and rights over time, funds are available for the implementation of the proposed CA. However, the ExA also remains concerned that the Applicant has not provided a clear or compelling justification for its selection of an element of the onshore cable alignment in what is identified in Chapter 10 as Zone 2. This alignment in that zone is not as direct as it could potentially be. Good evidence has not been provided demonstrating that more direct, shorter route options can be ruled out. On that basis, it appears that additional land and rights, over and above the minimum necessary to achieve the development objective, are proposed to be acquired.
- 12.2.4. A further concern arises in that the Applicant seeks to permanently acquire a substantial area of land to provide a replacement secure compound for the UK Border Force (a Crown entity) which currently occupies land proposed as the onshore substation site. Whilst there is a clear logic underlying the proposal to ensure that the loss of the UK Border Force's current compound is mitigated, it is not clear that the Applicant / undertaker is required to become the permanent landlord of the UK Border Force via CA to achieve this. The fact that the onshore cable alignment is not as direct as it could have been, combined with an absence of clarity about site and technology choice and an incomplete justification for the extent of land sought for the onshore substation, act together to generate very substantial doubt about the need for, nature of and extent of acquisition on this part of the onshore site. In such circumstances, the ExA finds that there is not a compelling case in the public interest for the acquisition of the land and rights sought for the construction of the onshore substation or for the provision of a replacement compound for the UK Border Force within the freehold interest of the Applicant/ undertaker.
- 12.2.5. For these reasons, the ExA recommends that, even if the SoS is minded to grant development consent, the CA of land and rights in relation to specific plots identified in Chapter 10 above as the Zone 2 land and forming part of the onshore cable alignment should be withheld.
- 12.2.6. The ExA has had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with the peaceful enjoyment of possessions in contravention of Art 1 of the First Protocol of the Human Rights Act 1998. On the basis of the findings in relation to the planning merits of the Proposed Development and in relation to the justification for CA of land and rights set out in Chapter 10, if the SoS accepts the conclusions drawn in Chapter 9 then the ExA finds that the wider public interest does not justify interference with the human rights of any of the owners and residential occupiers affected by CA and TP.

- 12.2.7. If the SoS does not accept the conclusion drawn in Chapter 9 and wishes to make the Order, the ExA nevertheless identifies that the wider public interest does not justify interference with the human rights of lands in those plots identified in Chapter 10 as the zone 2 land in respect of which statutory requirements and CA guidance tests are not met. Interference in the human rights of relevant freeholders and occupiers would not be proportionate and justified in the public interest.
- 12.2.8. The ExA has had regard to the Public Sector Equality Duty (PSED) for the purposes of its consideration of planning merits (in Chapter 6) and separately in respect of CA and TP (in Chapter 11). It is satisfied that the Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, the ExA is content that, if development consent were to be granted, there would be no breach of the PSED.
- 12.2.9. The ExA has had regard to all relevant requirements of the Infrastructure Planning (Decisions) Regulations 2010 and is satisfied that, if development consent were to be granted, those under regulations 3 and 7 would be complied with. However, regulation 3A addresses the need to prevent interference with legitimate uses of the sea (Regulation 3A (2)(c)) and so requires the SoS to give specific consideration to the reduction of navigation risk to the policy-acceptable ALARP range. As that policy objective is not met, this consideration indicates that interference with legitimate uses of the sea has not been ruled out.
- 12.2.10. The ExA is mindful that the SoS may not agree with its primary recommendation and hence its obligation is to provide the SoS with the best achievable form of dDCO on the basis of which the SoS could make the Order sought. That draft Order is set out at Appendix D to this Report, but it should be noted that it is not recommended by the ExA.
- 12.2.11. For reasons set out in Chapter 11 of this Report, the ExA remains concerned that the Appendix D Order cannot lawfully provide for the preparation of a scheme to demonstrate the reduction of navigation risk to ALARP and compliance with relevant NPS EN-3 policy after the grant of development consent. This is because, in summary terms, such a change would be a material change from the application (as the change to introduce the SEZ was when it was placed before the ExA). A requirement and or DML condition(s) needed to provide for an additional navigational risk measure supported by a further NRA would not meet three of the six applicable NPPF and PPG tests for valid planning conditions.
- 12.2.12. If the SoS disagrees with the ExA's policy conclusions on navigation risk in Chapter 5.2 and Chapter 9 and considers that the application including the SEZ does reduce navigational risk to within the ALARP range and on that basis also disagrees with (and re-balances) the ExA's planning balance conclusions in Chapter 9, then the dDCO in Appendix D could be made. In such circumstances, it would in the ExA's view address the

such outstanding concerns that are capable of being addressed by changes to the examined DCO.

- 12.2.13. However, for the purposes of the SoS' consideration, it follows that the starting point must be that the ExA remains unsatisfied that the Proposed Development meets the tests in s104 of PA2008, even with the changes to the DCO as set out in Appendix D.

## **12.3. RECOMMENDATION**

- 12.3.1. The ExA's reasoned findings and conclusions are set out in this Report.
- 12.3.2. The ExA recommends that the SoS for Business, Energy and Industrial Strategy should withhold consent for the Thanet Extension Offshore Wind Farm Order.

## **APPENDICES**

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## APPENDIX A: THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA)

Date	Event
30 October 2018	<p><b>Unaccompanied Site Inspection 1</b></p> <ul style="list-style-type: none"> <li>Viewpoints to the Proposed Development from Dover to the South Thanet coast, landfall location (Pegwell Bay Country Park) and towns</li> </ul>
9 November 2018	<p><b>Procedural Decision: 'Rule 6 Letter' Issue</b> ([<a href="#">PD-006</a>]; [<a href="#">PD-007</a>]) by the ExA of:</p> <ul style="list-style-type: none"> <li>Draft Examination Timetable</li> <li>Procedural Decisions</li> <li>Notification of Hearings</li> </ul>
10 December 2018	<p><b>Unaccompanied Site Inspection 2A</b></p> <ul style="list-style-type: none"> <li>Landfall location (Pegwell Bay Country Park and Stonelees Nature Reserve)</li> </ul>
11 December 2018	<p><b>Preliminary Meeting</b></p>
11 December 2018	<p><b>Issue Specific Hearing 1 (ISH1)</b></p> <p>ISH1 on International Issues</p>
12 December 2018	<p><b>Issue Specific Hearing 2 (ISH2)</b></p> <p>ISH2 on Marine, Shipping, Navigation and Safety Issues</p>
13 December 2018	<p><b>Unaccompanied Site Inspection 2B</b></p> <ul style="list-style-type: none"> <li>Viewpoints to the Proposed Development on the North Thanet Coast</li> </ul>
18 December 2018	<p><b>Procedural Decision: 'Rule 8 Letter'</b></p>



Date	Event
	<p>Issue ([<a href="#">PD-009</a>]; [<a href="#">PD-012</a>]) by the ExA of:</p> <ul style="list-style-type: none"> <li>• Examination Timetable</li> <li>• Procedural Decisions</li> <li>• Notification of Hearings</li> <li>• The ExA's Written Questions (ExQ1)</li> </ul>
15 January 2019	<p><b>Deadline 1</b> Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on Relevant Representations (RRs)</li> <li>• Summaries of all RRs exceeding 1500 words</li> <li>• Statements of Submission from Other Persons who have not already provided a written summary statement of case</li> <li>• Written Representations (WRs)</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Local Impact Reports from any local authorities</li> <li>• Statements of Common Ground (SoCG) requested by the ExA</li> <li>• Responses to ExQ1</li> <li>• Comments on updated application documents</li> <li>• Responses to any further information requested by the ExA</li> <li>• Post hearing submissions including written submissions of oral case</li> </ul>

Date	Event
	<ul style="list-style-type: none"> <li>• Nominations of suggested locations and justifications for site inspections for consideration by the ExA</li> <li>• Notification of wish to attend an Accompanied Site Inspection (ASI)</li> <li>• Notification from any Affected Person of wish to speak at a Compulsory Acquisition Hearing (CAH)</li> <li>• Notification of wish to speak at any of the further Issue Specific Hearings (ISHs)</li> <li>• Notification of wish to speak at an Open Floor Hearing (OFH)</li> <li>• Notification by Statutory Parties of wish to be considered an Interested Party</li> <li>• Applicant's Tracking List of SoCGs and agreements.</li> </ul>
22 January 2019	<p>Issue <a href="#">[PD-008]</a> by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of Accompanied Site Inspections (ASIs) and reserve (bad weather) arrangements</li> <li>• Notification of Hearings to be held in February 2019</li> </ul>
5 February 2019	<p><b>Deadline 2</b> Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs and responses to comments on RRs</li> <li>• Comments on Statements of Submission from Other Persons</li> <li>• Comments on Local Impact Reports</li> </ul>

<b>Date</b>	<b>Event</b>
	<ul style="list-style-type: none"> <li>• Comments on responses to ExQ1</li> <li>• Revised draft DCO from Applicant</li> <li>• Responses to any further information requested by the ExA</li> <li>• Comments on any additional information/ submissions received by Deadline 1</li> </ul>
18 February 2019	<p><b>Unaccompanied Site Inspection 3A</b></p> <ul style="list-style-type: none"> <li>• Pegwell Bay Country Park, Saltmarsh and Landfall</li> </ul>
18 February 2019	<p><b>Accompanied Site Inspection 1 (ASI1)</b></p> <ul style="list-style-type: none"> <li>• Proposed onshore cable alignment, substation and transmission system connection on private land at Richborough</li> </ul>
18 February 2019	<p><b>Unaccompanied Site Inspection 3B</b></p> <ul style="list-style-type: none"> <li>• Ebbsfleet Lane, Stonelees Nature Reserve, Pegwell Bay Country Park, Saltmarsh and Landfall</li> </ul>
19 February 2019	<p><b>Issue Specific Hearing 3 (ISH3)</b></p> <p>ISH3 on Environmental matters, Ecology, HRA, physical, construction and other matters</p>
19 February 2019	<p><b>Issue Specific Hearing 4 (ISH4)</b></p> <p>ISH4 on Landscape and Visual, Seascape and Historic Environment Issues</p>
19 February 2019	<p><b>Open Floor Hearing (OFH)</b></p>
20 February 2019	<p><b>Issue Specific Hearing 5 (ISH5)</b></p> <p>ISH5 on Maritime, Shipping, Navigation, Safety and Recreational Sea Use</p>

<b>Date</b>	<b>Event</b>
20 February 2019	<p><b>Issue Specific Hearing 6 (ISH6)</b></p> <p>ISH6 on Fishing and Fisheries</p>
21 February 2019	<p><b>Compulsory Acquisition Hearing 1 (CAH1)</b></p> <p>CAH1 on the Applicant’s compulsory acquisition (CA) and temporary possession (TP) case and on any CA and TP objections</p>
21 February 2019	<p><b>Issue Specific Hearing 7 (ISH7)</b></p> <p>ISH7 on the draft Development Consent Order (dDCO)</p>
1 March 2019	<p>Issue [<a href="#">PD-010</a>] by the ExA of:</p> <ul style="list-style-type: none"> <li>• Amended Examination Timetable</li> <li>• Notification of Hearings to be held in April 2019</li> <li>• Procedural Decisions</li> </ul>
5 March 2019	<p><b>Deadline 3</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Responses to any further information requested by the ExA</li> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Comments on any additional information/ submissions received by Deadline 2</li> <li>• Applicant’s Tracking List of SoCGs and agreements identifying any changes since Deadline 1</li> <li>• Applicant’s Tracking List of Application Documents and Plans identifying any changes since Deadline 1</li> </ul>

Date	Event
	<ul style="list-style-type: none"> <li>• Applicant's Tracking List of changes to mitigation measures</li> <li>• Requests from Interested Parties and Other Persons to be heard at ISH8, ISH9 and/ or CAH2 from 16 – 18 April 2019</li> <li>• Statement of direction from the Applicant indicating that either changes to the application will be submitted at Deadline 4 or alternatively confirming that no such changes will be submitted</li> <li>• Confirmation by Port of Tilbury London Ltd. and London Gateway Port Ltd. Of arrangements for an Accompanied Site Inspection (ASI2) to the Port of Tilbury, Tilbury 2 and London Gateway Port (the Thames Ports) on 15 April 2019</li> <li>• Requests from the Applicant, IPs and Other Persons to attend ASI2 to the Thames Ports</li> </ul>
12 March 2019	Issue [ <a href="#">EV-042</a> ] by the ExA of: <ul style="list-style-type: none"> <li>• Notification of ASI2 to the Thames Ports to be held in April 2019</li> </ul>
15 March 2019	Issue [ <a href="#">PD-011</a> ] by the ExA of: <ul style="list-style-type: none"> <li>• Procedural Decision</li> </ul>
18 March 2019	<b>Unaccompanied Site Inspection 4</b> <ul style="list-style-type: none"> <li>• Views from Essex Coast</li> </ul>
28 March 2019	<b>Deadline 4</b> Deadline for receipt of: <ul style="list-style-type: none"> <li>• Applicant's revised draft DCO</li> <li>• Responses to any further information requested by the ExA</li> </ul>

Date	Event
	<ul style="list-style-type: none"> <li>• Comments on any additional information/ submissions received by Deadline 3</li> <li>• Receipt of report(s) from any Shipping and Navigation workshop(s) convened between the Applicant and any IPs attending ISH5 or 6 (if applicable)</li> <li>• Request for change(s) and documented change(s) to the application (if any) from the Applicant</li> <li>• Parking and meeting locations, security and personal protective equipment requirements for attendees, transport arrangements for attendees within port perimeters, draft itinerary and maps for ASI2 from Port of Tilbury London Ltd. and London Gateway Port Ltd.</li> </ul>
28 March 2019	<b>Applicant submitted formal notification of a Material Change to the Application</b>
4 April 2019	Issue <a href="#">[PD-013]</a> by the ExA of: <ul style="list-style-type: none"> <li>• Amended Examination Timetable<sup>234</sup></li> <li>• Procedural Decisions</li> </ul>
5 April 2019	<b>Deadline 4B</b> Deadline for receipt of: <ul style="list-style-type: none"> <li>• A revised Navigation Risk Assessment (NRA) to support the SEZ proposal submitted at Deadline 4;</li> <li>• An addendum to the Environmental Statement (ES)</li> </ul>

<sup>234</sup> Due to only partial compliance by the Applicant with Deadline 4, Deadline 4A (originally scheduled for 9 April 2019) was cancelled

Date	Event
	<p>assessing the SEZ proposal submitted at Deadline 4; and</p> <ul style="list-style-type: none"> <li>• Any other documents required to record and justify the SEZ proposal submitted at Deadline 4 and that were not submitted at Deadline 4</li> <li>• In addition to submission of these documents to the ExA, the Applicant must simultaneously electronically distribute the documents to the persons listed in Annex B (of ExA's letter dated 4 April 2019)</li> </ul>
9 April 2019	<p>Issue [<a href="#">PD-014</a>] by the ExA of:</p> <ul style="list-style-type: none"> <li>• Amended Examination Timetable</li> <li>• Procedural Decisions</li> <li>• S51 Advice</li> </ul>
10 April 2019	<p>Publication [<a href="#">PD-016</a>] by ExA of:</p> <ul style="list-style-type: none"> <li>• The ExA's Further Written Questions (ExQ2)</li> </ul>
10 April 2019	<p><b>Deadline 4C</b> Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Lists of ports, shipping, pilotage and navigation safety experts intending to appear at ISH8</li> <li>• Submission of statements of evidence to be prepared by or for the Applicant and/ or IPs requesting to be heard to inform ISH8</li> <li>• In addition to submission of these documents to the ExA, the Applicant must simultaneously electronically distribute the documents to the persons listed in</li> </ul>

<b>Date</b>	<b>Event</b>
	Annex B (of ExA's letter dated 4 April 2019)
15 April 2019	<p><b>Unaccompanied Site Inspection 5</b></p> <ul style="list-style-type: none"> <li>Views from Reculver Towers, Westgate and Margate</li> </ul>
15 April 2019	<p><b>Accompanied Site Inspection 2 (ASI2)</b></p> <ul style="list-style-type: none"> <li>Part 1 – Port of Tilbury and Tilbury 2</li> <li>Part 2 – DP World London Gateway</li> </ul>
16 April 2019	<p><b>Issue Specific Hearing 8 (ISH8) (Part 1)</b></p> <p>ISH8 (Part 1) on Environmental, Shipping, Maritime, Fishing and other matters</p>
16 April 2019	<p><b>Issue Specific Hearing 8 (ISH8) (Part 2)</b></p> <p>ISH8 (Part 2) on Environmental, Shipping, Maritime, Fishing and other matters</p>
17 April 2019	<p><b>Issue Specific Hearing 8 (ISH8) (Part 3)</b></p> <p>ISH8 (Part 3) on Environmental, Shipping, Maritime, Fishing and other matters</p>
18 April 2019	<p><b>Compulsory Acquisition Hearing 2 (CAH2)</b></p> <p>CAH2 on the Applicant's CA and TP case and any outstanding objections to it</p>
18 April 2019	<p><b>Issue Specific Hearing 9 (ISH9)</b></p> <p>ISH9 on the draft Development Consent Order (dDCO)</p>



<b>Date</b>	<b>Event</b>
29 April 2019	<p><b>Deadline 5</b> Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Revised and progress versions of SoCGs</li> <li>• Responses to ExA’s Further Written Questions (ExQ2)</li> <li>• Comments on Applicant’s revised dDCO</li> <li>• Responses to any further information requested by the ExA (specifically including any ‘action points’ arising from hearings)</li> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Comments on any additional information/ submissions received by Deadline 4, 4B and 4C</li> <li>• Submission to the ExA by the Applicant of the SEZ Material Change consultation package as published</li> <li>• Submission to the ExA of comments on the SEZ Material Change application and related documents submitted at D4 and D4B by IPs and OPs already within the Examination</li> </ul>
3 May 2019	<p><b>Deadline 5A</b> Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on any revised dDCO submitted by the Applicant at Deadline 5</li> </ul>
7 May 2019	<p>Publication [<a href="#">PD-017</a>] by the ExA of:</p> <ul style="list-style-type: none"> <li>• The ExA’s dDCO commentary</li> </ul>

<b>Date</b>	<b>Event</b>
14 May 2019	Publication [ <a href="#">PD-018</a> ] by the ExA of: <ul style="list-style-type: none"> <li>• Report on the Implications for European Sites (RIES)</li> </ul>
16 May 2019	Publication [ <a href="#">PD-019</a> ] by the ExA of: <ul style="list-style-type: none"> <li>• The ExA's Further Written Questions (ExQ3)</li> </ul>
28 May 2019	<p><b>Deadline 6</b> Deadline for receipt of:</p> <p>Final SoCGs</p> <ul style="list-style-type: none"> <li>• Responses to ExA's Further Written Questions (ExQ3)</li> <li>• Comments on responses to the ExA's Further Written Questions (ExQ2)</li> <li>• Comments on the ExA's dDCO commentary</li> <li>• Comments on the RIES</li> <li>• Responses to any further information requested by the ExA</li> <li>• Comments on any additional information/ submissions received by Deadline 5 and 5A</li> <li>• Submission to the ExA by the Applicant of the SEZ Material Change Consultation Report (described in Annex C to the R8(3) and R9 Letter of 9 April) and any supporting documents</li> <li>• Submission to the ExA of comments on D5 submissions on the SEZ Material Change application by IPs and OPs already within the Examination</li> </ul>

Date	Event
	<ul style="list-style-type: none"> <li>Submission of requests to become an IP or OP from any person responding to the Applicant's SEZ Material Change consultation package who is not already involved in the Examination</li> <li>Statements of submissions by persons requesting to become an IP or OP in response to the Applicant's SEZ Material Change consultation package and who are not already involved in the Examination</li> </ul>
30 May 2019	Publication [ <a href="#">PD-020</a> ] by the ExA of: <ul style="list-style-type: none"> <li>The ExA's Further requests for information under EPR Rule 17</li> </ul>
3 June 2019	<b>Deadline 6A</b> Deadline for receipt of: <ul style="list-style-type: none"> <li>Responses to the ExA's Further requests for information under EPR Rule 17</li> </ul>
6 June 2019	<b>Deadline 7</b> Deadline for receipt of: <ul style="list-style-type: none"> <li>Comments on responses to the ExA's Further Written Questions (ExQ3)</li> <li>Comments on responses to the ExA's Further requests for information under EPR Rule 17</li> <li>Responses to comments on the ExA's dDCO commentary</li> <li>Responses to comments on the RIES</li> <li>Responses to any further information requested by the ExA</li> <li>Comments on any additional information/ submissions received by Deadline 6</li> </ul>

Date	Event
	<ul style="list-style-type: none"> <li>• Statements of matters not agreed (in circumstances where a SoCG could not be finalised by Deadline 6)</li> <li>• Final DCO to be submitted by the Applicant in the SI template with the SI template validation report</li> <li>• Applicant’s Tracking List of SoCGs and agreements identifying any changes since Deadline 3</li> <li>• Applicant’s Tracking List of Application Documents and Plans identifying any changes since Deadline 3</li> <li>• Applicant’s Tracking List of changes to mitigation measures, identifying any changes since Deadline 3</li> <li>• Submission to the ExA of comments on the SEZ Material Change Consultation Report and any supporting documents</li> <li>• Submission to the ExA of comments on statements of submission made at D6 by IPs or OPs who joined the Examination at that deadline</li> <li>• Submission to the ExA of responses to comments on D5 submissions on the Material Change application by IPs and Ops already within the Examination before D6</li> </ul>
10 June 2019	<p><b>Deadline 8</b> Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Submission to the ExA by the Applicant of responses to comments on statements of submission made at D6 by new</li> </ul>

Date	Event
	<p>IPs or Ops who joined the Examination at that deadline</p> <ul style="list-style-type: none"> <li>Submission to the ExA by the Applicant of responses to comments on the SEZ Material Change consultation report and any supporting documents</li> </ul>
11 June 2019	<p>Issue <a href="#">[PD-022]</a> by the ExA of:</p> <ul style="list-style-type: none"> <li>Declined Request for Procedural Decision or Recommendation</li> </ul>
11 June 2019	<p><b>Close of Examination</b> <a href="#">[PD-023]</a></p>

## **APPENDIX B: EXAMINATION LIBRARY**

# **Thanet Extension Offshore Wind Farm Project Examination Library**

**Updated – 12 July 2019**

This Examination Library relates to the Thanet Extension Offshore Wind Farm application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

**EN010084 – Thanet Extension Offshore Wind Farm Project****Examination Library - Index**

<b>Category</b>	<b>Reference</b>
<a href="#">Application Documents</a>  As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the Examining Authority</a>  Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
<a href="#">Additional Submissions</a>  Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<a href="#">Events and Hearings</a>  Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<b><a href="#">Representations – by Deadline</a></b>	
<a href="#">Deadline 1:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP1-xxx



<p><a href="#">Deadline 2:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP2-xxx</p>
<p><a href="#">Deadline 3:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP3-xxx</p>
<p><a href="#">Deadline 4:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP4-xxx</p>
<p><a href="#">Deadline 4B:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP4B-xxx</p>
<p><a href="#">Deadline 4C:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP4C-xxx</p>
<p><a href="#">Deadline 5:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP5 -xxx</p>
<p><a href="#">Deadline 5A:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP5A-xxx</p>
<p><a href="#">Deadline 6</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	<p>REP6 -xxx</p>

<p><a href="#">Deadline 6A:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i></p> <p>Includes R17 responses</p>	<p>REP6A-xxx</p>
<p><a href="#">Deadline 7:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i></p> <p>Includes R17 responses</p>	<p>REP7-xxx</p>
<p><a href="#">Deadline 8:</a></p> <p><i>State what type of submissions was requested for this deadline in the heading</i></p> <p>Includes R17 responses</p>	<p>REP8-xxx</p>
<p><a href="#">Other Documents</a></p> <p>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>	<p>OD-xxx</p>

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APP-001	<a href="#">Vattenfall Wind Power Limited</a> 1.1 Covering Letter
APP-002	<a href="#">Vattenfall Wind Power Limited</a> 1.1.1 Section 55 Checklist
APP-003	<a href="#">Vattenfall Wind Power Limited</a> 1.2 Application Form
APP-004	<a href="#">Vattenfall Wind Power Limited</a> 1.3 Guide to the Application
APP-005	<a href="#">Vattenfall Wind Power Limited</a> 1.4 Navigation Document
APP-006	<a href="#">Vattenfall Wind Power Limited</a> 1.5 Copies of Newspaper Notices
APP-007	<a href="#">Vattenfall Wind Power Limited</a> 2.1 Location Plan
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PD-006	<a href="#">Rule 6 Letter</a>
PD-007	<a href="#">Other Person letter to non-UK parties</a>
PD-008	<a href="#">Notification of Accompanied Site Inspection 1, Issue Specific, Compulsory Acquisition and Open Floor Hearings in February 2019</a>
PD-009	<a href="#">Rule 8 Letter</a>
PD-010	<a href="#">Rule 8(3) Variation to timetable and Rule 13 Notification of Hearings</a> Notification of Issue Specific and Compulsory Acquisition Hearings in April 2019
PD-011	<a href="#">Rule 9 – Notification of Procedural Decision</a>
PD-012	<a href="#">Examining Authority Questions</a>
PD-013	<a href="#">Rule 8(3) Amended Examination Timetable and Rule 9 Notification of Procedural Decision</a>
PD-014	<a href="#">Rule 8(3) and Rule 9 letter - Change to the Examination Timetable, Procedural Decisions and section 51 advice</a>
PD-015	<a href="#">Examining Authority's Further Written Questions 2</a> Superseded by Examining Authority's Further Written Questions 2 (Amended)
PD-016	<a href="#">Examining Authority's Further Written Questions 2 (Amended)</a> EXQ2 Amended numbering
PD-017	<a href="#">Examining Authority</a> Commentary on the draft Development Consent Order (dDCO)
PD-018	<a href="#">Report on the Implications for European Sites (RIES)</a> Issued by the Examining Authority on 14 May 2019
PD-019	<a href="#">Examining Authority's Further Written Questions 3</a>
PD-020	<a href="#">Request for Further Information - Rule 17</a>
PD-021	<a href="#">Examining Authority</a> National Federation of Fishermen's Organisations Other Person's Status
PD-022	<a href="#">Declined Request for Procedural Decision or Recommendation on Pilotage Simulation</a>
PD-023	<a href="#">Notification of completion of the Examining Authority's Examination</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">Natural England</a> Response to Rule 6 - Accepted at the discretion of the Examining Authority
AS-002	<a href="#">Vattenfall Wind Power Limited</a> Response to Rule 6 - Accepted at the discretion of the Examining Authority
AS-003	<a href="#">Marine Management Organisation</a>

	Response to Rule 6 - Accepted at the discretion of the Examining Authority
AS-004	<a href="#">Historic England</a> Response to Rule 6 - Accepted at the discretion of the Examining Authority
AS-005	<a href="#">Port of Tilbury London Limited (PoTLL)</a> Letter to the Examining Authority. Additional Submission accepted at the discretion of the Examining Authority and Other Person Status given accordingly.
AS-006	<a href="#">Government of France</a> Response to Rule 6 - Accepted at the discretion of the Examining Authority
AS-007	<a href="#">Environment Agency</a> Additional Submission – Accepted at the discretion of the Examining Authority
AS-008	<a href="#">Kent County Council</a> Update on Works in Pegwell Bay Country Park – Additional submission. Accepted at the discretion of the Examining Authority
AS-009	<a href="#">Vattenfall Wind Power Limited</a> Response to S51 advice - Cover letter
AS-010	<a href="#">Vattenfall Wind Power Limited</a> Doc.2.3 Land Plan (Offshore). Revised Application Document. Accepted at the discretion of the Examining Authority
AS-011	<a href="#">Vattenfall Wind Power Limited</a> Doc.2.12 Crown Land Plan. Revised Application Document. Accepted at the discretion of the Examining Authority
AS-012	<a href="#">BritNed Development Ltd</a> Statement of Submission: received on the 11 March 2019
AS-013	<a href="#">Ian Hide</a> Additional Submission accepted at the discretion of the Examining Authority
AS-014	<a href="#">Vattenfall Wind Power Limited</a> Additional Submission accepted at the discretion of the Examining Authority - Consultation on a material change to the Thanet Extension Offshore Wind Farm
AS-015	<a href="#">Southern Water</a> Additional Submission accepted at the discretion of the Examining Authority
AS-016	<a href="#">Steve Willey - SWE on behalf of Mario Campion</a> Additional Submission - Request to become an Interested Party: received on the 1 May 2019
AS-017	<a href="#">National Federation of Fishermen's Organisations</a> Additional Submission accepted at the discretion of the Examining Authority
AS-018	<a href="#">National Grid Electricity Transmission Plc</a> Additional Submission accepted at the discretion of the Examining Authority
AS-019	<a href="#">Nemo Link Limited</a> Withdrawal of representation. Additional Submission accepted at the discretion of the Examining Authority

AS-020	<a href="#">Southern Water</a> Withdrawal of representation. Additional Submission accepted at the discretion of the Examining Authority
AS-021	<a href="#">UK Power Networks</a> Withdrawal of representation. Additional Submission accepted at the discretion of the Examining Authority
AS-022	<a href="#">Trinity House</a> Additional Submission accepted at the discretion of the Examining Authority
AS-023	<a href="#">Marine Management Organisation</a> Additional Submission accepted at the discretion of the Examining Authority
AS-024	<a href="#">Natural England</a> Additional Submission accepted at the discretion of the Examining Authority
AS-025	<a href="#">Maritime and Coastguard Agency</a> Additional Submission accepted at the discretion of the Examining Authority
AS-026	<a href="#">The Crown Estate</a> Additional Submission accepted at the discretion of the Examining Authority
AS-027	<a href="#">Vattenfall Wind Power Limited</a> Additional Submission accepted at the discretion of the Examining Authority
AS-028	<a href="#">Kent and Essex Inshore Fisheries and Conservation Authority (KEIFCA)</a> Response to Rule 6 - Additional Submission Accepted at the discretion of the Examining Authority
<b>Events and Hearings</b>	
<b>Accompanied, Unaccompanied site inspection and Hearings</b>	
EV-001	<a href="#">Note from Unaccompanied Site Inspection - 30 October 2018</a>
EV-002	<a href="#">Action Points requested by the Examining Authority arising from ISH1 - 11 December</a>
EV-003	<a href="#">Action Points requested by the Examining Authority arising from ISH2 - 12 December</a>
EV-004	<a href="#">Recording of Preliminary Meeting - 11 December 2018</a>
EV-005	<a href="#">Recording of Issue Specific Hearing 1 (ISH1) - 11 December 2018</a>
EV-006	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) - Part 1 (AM) - 12 December 2018</a>
EV-007	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) - Part 2 (PM) - 12 December 2018</a>
EV-008	<a href="#">Note from Unaccompanied Site Inspection 2 (USI2) - 10 and 13 December 2018</a>
EV-009	<a href="#">Notification of Accompanied Site Inspection 1, Issue Specific, Compulsory Acquisition and Open Floor Hearings in February 2019</a>
EV-010	<a href="#">Accompanied Site Itinerary - Monday 18 February 2019</a>

EV-011	<a href="#">Hearing Agendas and Accompanied Site Inspection Itinerary for February 2019</a>
EV-012	<a href="#">Open Floor Hearing 1 - Tuesday 19 February 2019</a> Hearing Agenda for Open Floor Hearing 1
EV-013	<a href="#">Issue Specific Hearing 3 - Tuesday 19 February 2019</a> Hearing Agenda for ISH3 on Environmental matters, Ecology, HRA, physical, construction and other matters
EV-014	<a href="#">Issue Specific Hearing 4 - Tuesday 19 February 2019</a> Hearing Agenda for ISH4 on Landscape and Visual, Seascape and Historic Environment Issues
EV-015	<a href="#">Issue Specific Hearing 5 - Wednesday 20 February 2019</a> Hearing Agenda for ISH5 on Maritime, Shipping, Navigation, Safety and Recreational Sea Use
EV-016	<a href="#">Issue Specific Hearing 6 - Wednesday 20 February 2019</a> Hearing Agenda for ISH6 on Fishing and Fisheries
EV-017	<a href="#">Issue Specific Hearing 7 - Thursday 21 February 2019</a> Hearing Agenda for ISH7 on the draft Development Consent Order (dDCO)
EV-018	<a href="#">Compulsory Acquisition Hearing - Thursday 21 February 2019</a> Compulsory Acquisition Hearing 1 – Agenda
EV-019	<a href="#">Action Points requested by the Examining Authority arising from ISH3</a>
EV-020	<a href="#">Action Points requested by the Examining Authority arising from ISH4</a>
EV-021	<a href="#">Action Points requested by the Examining Authority arising from ISH5</a>
EV-022	<a href="#">Action Points requested by the Examining Authority arising from ISH6</a>
EV-023	<a href="#">Action Points requested by the Examining Authority arising from ISH7</a>
EV-024	<a href="#">Action Points requested by the Examining Authority arising from CAH1</a>
EV-025	<a href="#">Recording of Open Floor Hearing (OFH1) – 19 February 2019</a>
EV-026	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) – Part 1 – 19 February 2019</a>
EV-027	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) – Part 2 – 19 February 2019</a>
EV-028	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) – Part 3 – 19 February 2019</a>
EV-029	<a href="#">Recording of Issue Specific Hearing 4 (ISH4) – Part 1 – 19 February 2019</a>
EV-030	<a href="#">Recording of Issue Specific Hearing 4 (ISH4) – Part 2 – 19 February 2019</a>
EV-031	<a href="#">Recording of Issue Specific Hearing 5 (ISH5) – Part 1 - 20 February 2019</a>
EV-032	<a href="#">Recording of Issue Specific Hearing 5 (ISH5) – Part 2 - 20 February 2019</a>
EV-033	<a href="#">Recording of Issue Specific Hearing 5 (ISH5) – Part 3 – 20 February 2019</a>
EV-034	<a href="#">Recording of Issue Specific Hearing 5 (ISH5) – Part 4 – 20 February 2019</a>

EV-035	<a href="#">Recording of Issue Specific Hearing 6 (ISH6) – Part 1 – 20 February 2019</a>
EV-036	<a href="#">Recording of Issue Specific Hearing 6 (ISH6) – Part 2 – 20 February 2019</a>
EV-037	<a href="#">Recording of Issue Specific Hearing 7 (ISH7) – Part 1 – 21 February 2019</a>
EV-038	<a href="#">Recording of Issue Specific Hearing 7 (ISH7) – Part 2 – 21 February 2019</a>
EV-039	<a href="#">Recording of Compulsory Acquisition Hearing (CAH1) 22 February 2019</a>
EV-040	<a href="#">Note from Unaccompanied Site Inspection - 18 February 2019</a>
EV-041	<a href="#">Preliminary Meeting Note</a>
EV-042	<a href="#">Notification of Accompanied Site Inspection 2: The Thames Ports</a>
EV-043	<a href="#">Note from Unaccompanied Site Inspection - 18 March 2019</a>
EV-044	<a href="#">Accompanied Site Inspection 2: The Thames Port – Final Itinerary</a> Final Itinerary for ASI2
EV-045	<a href="#">Action Points requested by the Examining Authority arising from ISH8 1 of 2</a> Natural Environment and Fishing matters
EV-046	<a href="#">Action Points requested by the Examining Authority arising from ISH8 2 of 2</a> Actions relating to Shipping and Navigation matters
EV-047	<a href="#">Action Points requested by the Examining Authority arising from ISH9</a>
EV-048	<a href="#">Recording of Issue Specific Hearing 8 (session 1) - Part 1 of 5 - 16 April 2019</a>
EV-049	<a href="#">Recording of Issue Specific Hearing 8 (session 1) - Part 2 of 5 - 16 April 2019</a>
EV-050	<a href="#">Recording of Issue Specific Hearing 8 (session 1) - Part 3 of 5 - 16 April 2019</a>
EV-051	<a href="#">Recording of Issue Specific Hearing 8 (session 1) - Part 4 of 5 - 16 April 2019</a>
EV-052	<a href="#">Recording of Issue Specific Hearing 8 (session 1) - Part 5 of 5 - 16 April 2019</a>
EV-053	<a href="#">Recording of Issue Specific Hearing 8 (session 2) - Part 1 of 5 - 17 April 2019</a>
EV-054	<a href="#">Recording of Issue Specific Hearing 8 (session 2) - Part 2 of 5 - 17 April 2019</a>
EV-055	<a href="#">Recording of Issue Specific Hearing 8 (session 2) - Part 3 of 5 - 17 April 2019</a>
EV-056	<a href="#">Recording of Issue Specific Hearing 8 (session 2) - Part 4 of 5 - 17 April 2019</a>



EV-057	<a href="#">Recording of Issue Specific Hearing 8 (session 2) - Part 5 of 5 - 17 April 2019</a>
EV-058	<a href="#">Recording of Compulsory Acquisition Hearing 2 (CAH2)- Part 1 of 2 - 18 April 2019</a>
EV-059	<a href="#">Recording of Compulsory Acquisition Hearing 2 (CAH2) - Part 2 of 2 - 18 April 2019</a>
EV-060	<a href="#">Recording of Issue Specific Hearing 9 (ISH9) - 18 April 2019</a>
EV-061	<a href="#">Action Points requested by the Examining Authority arising from CAH2</a>
EV-062	<a href="#">Note from Unaccompanied Site Inspection – 15 April 2019</a>
EV-063	<a href="#">Hearing Agendas for April 2019</a>
EV-064	<a href="#">Issue Specific Hearing 8 - Tuesday 16 and Wednesday 17 April 2019</a> Thanet Offshore Wind Farm Extension Agenda for ISH8: Environmental, Maritime, Fishing and other matters
EV-065	<a href="#">Issue Specific Hearing 9 - Thursday 18 April 2019</a> Thanet Offshore Wind Farm Extension Agenda for Issue Specific Hearing 9
EV-066	<a href="#">Compulsory Acquisition Hearing 2 - Thursday 18 April 2019</a> Thanet Offshore Wind Farm Extension Agenda for the Compulsory Acquisition Hearing 2

## Representations

### Deadline 1 – 15 January 2019

- Comments on Relevant Representations (RRs)
- Summaries of all RR's exceeding 1500 words
- Statements of Submission from Other Persons who have not already provided a written summary statement of case
- Written Representations (WRs)
- Summaries of all WRs exceeding 1500 words
- Local Impact Reports from any local authorities
- Statements of Common Ground (SoCG) requested by the ExA – see Annex E
- Responses to ExQ1
- Comments on updated application documents
- Responses to any further information requested by the ExA
- Post hearing submissions including written submissions of oral case
- Nominations of suggested locations and justifications for site inspections for consideration by the ExA
- Notification of wish to attend an Accompanied Site Inspection (ASI)
- Notification from any Affected Person of wish to speak at a Compulsory Acquisition Hearing (CAH)
- Notification of wish to speak at any of the further Issue Specific Hearings (ISHs)
- Notification of wish to speak at an Open Floor Hearing (OFH)
- Notification by Statutory Parties of wish to be considered an Interested Party
- Applicant's Tracking List of SoCGs and agreements

REP1-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission - Cover Letter
REP1-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 32: Draft Itinerary for Accompanied Site Inspections (ASI)
REP1-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission - Guide to Application
REP1-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 19: Statement of Common Ground – Royal Yachting Association - Revision B. Late submission accepted at the Examining Authority’s discretion
REP1-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex P to Appendix 25: Response to Examining Authority's Written Questions - Supplementary Note – Navigation Risk Assessment Scoring
REP1-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex Q to Appendix 25: Re-presented Hazard Log
REP1-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission –Annex J to Appendix 25: Consultation Minutes and Correspondence
REP1-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex P to Appendix 25: Applicant’s Responses to the Examining Authority’s First Written Questions – EXQ1 –Supplementary Note – Navigation Risk Assessment Scoring
REP1-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex B to Appendix 35: Log of Changes to the Draft Development Consent Order
REP1-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission– Appendix 36: Revised Application Document. Doc 4.1 Statement of Reasons - Revision B
REP1-011	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 39: Revised Application Document. Doc 8.6 Offshore Archaeology Draft Written Scheme of Investigation - Revision B
REP1-012	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 28: Response to the Examining Authority's Action Points arising from Issue Specific Hearing 2
REP1-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex A and B to Appendix 26: Response to Examining Authority's Action Points arising from Preliminary Meeting (Annexes A & B)
REP1-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 45: Removal of Landfall Option 2
REP1-015	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 1 Submission – Appendix 44: Report 3 of 3: Geophysical Investigation Report
REP1-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 39: Revised Application Document. Doc 8.6 Offshore Archaeology Draft Written Scheme of Investigation - Revision B
REP1-017	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 1: Response to Relevant Representations
REP1-018	<a href="#">Vattenfall Windpower Limited</a> Deadline 1 Submission – Appendix 3: Statement of Common Ground – Dover District Council (DDC)
REP1-019	<a href="#">Vattenfall Windpower Limited</a> Deadline 1 Submission – Appendix 6: Statement of Common Ground – Highways England (HE)
REP1-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex Q to Appendix 25: Re-presented Hazard Log
REP1-021	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex D to Appendix 28: Minutes with MCA from October 2018
REP1-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex E to Appendix 25: Response to Examining Authority's Written Questions - 1.3.7 PA2008 s127 Statutory Undertakers Land Rights
REP1-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annexes A to G to Appendix 1: Responses to Relevant Representations
REP1-024	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 25: Response to Examining Authority's Written Questions
REP1-025	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex A to Appendix 28: Nautical Chart
REP1-026	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 41: Shipping and Navigation: Schedule of Mitigation
REP1-027	<a href="#">Vattenfall Windpower Limited</a> Deadline 1 Submission – Appendix 17: Statement of Common Ground – Riveroak Strategic Partners Limited (RSP)
REP1-028	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 23: Statement of Common Ground – Chamber of Shipping
REP1-029	<a href="#">Vattenfall Windpower Limited</a> Deadline 1 Submission – Appendix 4: Statement of Common Ground – Environment Agency
REP1-030	<a href="#">Vattenfall Windpower Limited</a> Deadline 1 Submission – Statement of Common Ground – Historic England
REP1-031	<a href="#">Vattenfall Windpower Limited</a>

	Deadline 1 Submission – Statement of Common Ground – Kent & Essex Inshore Fisheries Conservation Authority
REP1-032	<a href="#">Vattenfall Windpower Limited</a> Deadline 1 Submission – Statement of Common Ground – Kent County Council
REP1-033	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 10: Statement of Common Ground – Kent Wildlife Trust
REP1-034	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 18: Statement of Common Ground – Royal Society for the Protection of Birds (RSPB)
REP1-035	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Statement of Common Ground – Port of London Authority
REP1-036	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Statement of Common Ground – Royal Yachting Association
REP1-037	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 12: Statement of Common Ground – Marine Management Organisation
REP1-038	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission Statement of Common Ground – Maritime & Coastguard Agency (MCA)
REP1-039	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 14: Statement of Common Ground – Natural England Offshore Ornithology
REP1-040	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 13: Statement of Common Ground – National Trust
REP1-041	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 21: Statement of Common Ground – Thanet District Council (TDC)
REP1-042	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 20: Statement of Common Ground - Thanet Fishermen’s Association
REP1-043	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 22: Statement of Common Ground – Trinity House Lighthouse Service (THLS)
REP1-044	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex B to Appendix 28: NE Spit Searoom
REP1-045	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 – Annex L to Appendix 25: Pilot Transfer Track Plots
REP1-046	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex K to Appendix 25: A Pilot Transfer Bridge Simulation – Inception Report
REP1-047	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 40: Onshore Written Scheme of Investigation, Site Investigation Works-Watching Brief
REP1-048	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 1 Submission – Annex B to Appendix 25: Natural England Letter
REP1-049	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex C to Appendix 28: Safety Zone Figures
REP1-050	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex C to Appendix 25: Response to Examining Authority’s Written Questions - 1.3.5 Crown Land and Consent
REP1-051	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex M to Appendix 25: Response to Examining Authority's Written Questions - Supplementary ExQ1 1.12.1
REP1-052	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission - Annex D to Appendix 25: Response to Examining Authority's Written Questions - 1.3.6 Schedule of CA and TP Objections
REP1-053	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex F to Appendix 25: Response to ExQ1 - 1.3.8 PA2008 s138 Statutory Undertakers Apparatus
REP1-054	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex N to Appendix 25: Response to Examining Authority's Written Questions - Supplementary ExQ1 - 1.12.3
REP1-055	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex O to Appendix 25: Response to Examining Authority's Written Questions - Supplementary ExQ1 1.12.4
REP1-056	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 38A: Revised Application Document. Doc 2.2 Land Plan (Offshore) - Revision C
REP1-057	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 38B: Revised Application Document. Doc 2.3 Land Plan (Onshore) - Revision C
REP1-058	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 38C: Revised Application Document. Doc 2.4 Special Category Land Plans - Revision C
REP1-059	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 38D: Revised Application Document. Doc 2.5 Works Plan (Offshore) - Revision B
REP1-060	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 38F: Revised Application Document. Doc 2.6 Works Plan (Onshore) - Revision B
REP1-061	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 38H: Revised Application Document. Doc 2.12 Crown Land Plans - Revision C
REP1-062	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 35: Revised Application Document. Doc 3.1 Draft Development Consent Order (Clean) - Revision A
REP1-063	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 1 Submission – Appendix 37: Revised Application Document. Doc 4.3 Book of Reference Revision B
REP1-064	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex I to Appendix 25: Consultation Matrix
REP1-065	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex A to Appendix 25: Figures related to designated sites for ease of reference
REP1-066	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 2: Summary of key issues raised in Relevant Representations exceeding 1500 words
REP1-067	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 31: Post hearing submissions for Issue Specific Hearing 2 including written submissions of oral case
REP1-068	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex A to Appendix 35: Revised Application Document. Doc 3.1 Draft Development Consent Order (Tracked Changes) - Revision A
REP1-069	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 42: Revised Application Document. Doc 8.7 Outline Landscape and Ecological Management Plan - Revision B
REP1-070	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 38G: Works Plan (Onshore) - Key Plan (Comparison)
REP1-071	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 43: Revised Application Document. Doc 8.15 Biogenic Reef Mitigation Plan - Revision B
REP1-072	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 38E: Works Plan (Offshore) RLB Comparison
REP1-073	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 15: Statement of Common Ground – Natural England Technical Topics (excluding Offshore Ornithology, Saltmarsh, and Site Selection)
REP1-074	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 74: Post hearing submissions for the Preliminary Meeting including written submissions of oral case
REP1-075	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 30: Post hearing submissions for Issue Specific Hearing 1 including written submissions of oral case
REP1-076	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex H to Appendix 25: Gate Analysis Foxtrot
REP1-077	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex G to Appendix 25: Vessel Traffic Analysis Plots -Dipping, anchoring and inshore route by draught, length and type

REP1-078	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Appendix 27: Response to Examining Authority's Action Points arising from Issue Specific Hearing 1
REP1-079	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission - Appendix 24: Statement of Common Ground – Port of Tilbury and London Gateway
REP1-080	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission - Appendix 33: Request for Statements of Common Ground and Statement of Commonality
REP1-081	<a href="#">Vattenfall Windpower Limited</a> Deadline 1 Submission – Appendix 5: Statement of Common Ground – Estuary Services Limited
REP1-082	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex J to Appendix 25: Consultation Minutes and Correspondence
REP1-083	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Submitted at the Examining Authority's request. Publicly available Nemo Link Interconnector planning documents.
REP1-084	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Submitted at the Examining Authority's request. Publicly available Nemolink Interconnector planning documents
REP1-085	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Submitted at the Examining Authority's request. Publicly available Nemolink Interconnector planning documents
REP1-086	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Annex D to Appendix 28: Minutes with MCA from October 2018
REP1-087	<a href="#">Vattenfall Wind Power Limited</a> Deadline 1 Submission – Submitted at the Examining Authority's request. Publicly available Nemo Link Interconnector planning documents
REP1-088	<a href="#">Port of Tilbury London Limited</a> Deadline 1 Submission – Nomination of suggested locations and justifications for site inspections for consideration by the Examining Authority
REP1-089	<a href="#">Charles Russell Speechlys on behalf of RAMAC Holding Limited</a> Deadline 1 Submission – Written Representation and Summary of Written Representation
REP1-090	<a href="#">Dover District Council</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-091	<a href="#">Dover District Council</a> Deadline 1 Submission – Local Impact Report
REP1-092	<a href="#">Environment Agency</a> Deadline 1 Submission – Written Representation, Response to the Examining Authority's Written Questions and Statement of Common Ground comments
REP1-093	<a href="#">John Lowe</a>

	Deadline 1 Submission – Written Representation
REP1-094	<a href="#">Government of France</a> Deadline 1 Submission – Written Representation
REP1-095	<a href="#">Historic England</a> Deadline 1 Submission – Written Representation
REP1-096	<a href="#">Kent County Council</a> D Deadline 1 Submission – Written Representation
REP1-097	<a href="#">Kent County Council</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-098	<a href="#">Kent County Council</a> Deadline 1 Submission – Local Impact Report
REP1-099	<a href="#">Kent and Essex Inshore Fisheries and Conservation Authority (KEIFCA)</a> Deadline 1 Submission – Statement of Submissions from Other Person
REP1-100	<a href="#">Kent Fire and Rescue Service</a> Deadline 1 Submission – Notification by Statutory Parties of wish to be considered an Interested Party
REP1-101	<a href="#">Kent Wildlife Trust</a> Deadline 1 Submission – Summary of Written Representation
REP1-102	<a href="#">Kent Wildlife Trust</a> Deadline 1 Submission – Written Representation
REP1-103	<a href="#">Kent Wildlife Trust</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-104	<a href="#">London Pilots Council</a> Deadline 1 Submission – Post Hearing Submissions for Issue Specific Hearing 2 including written submission of oral case
REP1-105	<a href="#">Magda Crostline Ltd on behalf of RAMAC Holding Limited</a> Deadline 1 Submission – Written Representation
REP1-106	<a href="#">Marine Management Organisation</a> Deadline 1 Submission – Summary of Relevant Representations
REP1-107	<a href="#">Marine Management Organisation</a> Deadline 1 Submission – Written Representation
REP1-108	<a href="#">Marine Management Organisation</a> Deadline 1 Submission – Response to the Examining Authority's Questions
REP1-109	<a href="#">Maritime &amp; Coastal Agency</a> Deadline 1 Submission – Post hearing submissions for Issue Specific Hearing 1 and Issue Specific Hearing 2 including written submissions of oral case and Response to ExQ1
REP1-110	<a href="#">NATS</a> Deadline 1 Submission – Response to Rule 8 Letter
REP1-111	<a href="#">Natural England</a> Deadline 1 Submission – Annex D: Summary of Relevant Representation
REP1-112	<a href="#">Natural England</a> Deadline 1 Submission – Annex C: Summary of Written Representation



REP1-113	<a href="#">Natural England</a> Deadline 1 Submission – Written Representation
REP1-114	<a href="#">Natural England</a> Deadline 1 Submission – Annex E: Comments on Relevant Representations
REP1-115	<a href="#">Natural England</a> Deadline 1 Submission – Annex A: List of documents received from the Applicant since Relevant Representations
REP1-116	<a href="#">Natural England</a> Deadline 1 Submission – Annex B: Response to Examining Authority Written Questions
REP1-117	<a href="#">The National Trust</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-118	<a href="#">The National Trust</a> Deadline 1 Submission - Summary of Written Representation
REP1-119	<a href="#">The National Trust</a> Deadline 1 Submission – Written Representation
REP1-120	<a href="#">The National Trust</a> Deadline 1 Submission – Response to Examining Authority's Written Questions
REP1-121	<a href="#">Nemo Link Limited</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-122	<a href="#">Nemo Link Limited</a> Deadline 1 Submission – Written Representation
REP1-123	<a href="#">Mr G Pulman</a> Deadline 1 Submission – Written Representation
REP1-124	<a href="#">Shakespeare Martineau on behalf of National Grid Electricity Transmission Plc (NGET)</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-125	<a href="#">Shakespeare Martineau on behalf of National Grid Electricity Transmission Plc (NGET)</a> Deadline 1 Submission – Written Representation
REP1-126	<a href="#">Shakespeare Martineau on behalf of National Grid Electricity Transmission Plc</a> Deadline 1 Submission – Letter to the Planning Inspectorate
REP1-127	<a href="#">Thanet District Council</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-128	<a href="#">Thanet District Council</a> Deadline 1 Submission – Local Impact Report
REP1-129	<a href="#">Trinity House</a> Deadline 1 Submission – Post Hearing Submission for Issue Specific Hearing 2 including written submission of oral case
REP1-130	<a href="#">Trinity House</a> Deadline 1 Submission – Response to Draft Development Consent Order
REP1-131	<a href="#">Trinity House</a>

	Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-132	<a href="#">Thanet Fishermen's Association</a> Deadline 1 Submission – Summary of Written Representation
REP1-133	<a href="#">Thanet District Council</a> Deadline 1 Submission – Written Representation
REP1-134	<a href="#">Thanet Fishermen's Association</a> Deadline 1 Submission – Written Representation
REP1-135	<a href="#">The Crown Estate</a> Deadline 1 Submission – Written Representation
REP1-136	<a href="#">UK Chamber of Shipping</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-137	<a href="#">Winckworth Sherwood on behalf of Port of London Authority and Estuary Services Limited</a> Deadline 1 Submission – Response to further information requested by the Examining Authority
REP1-138	<a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority and Estuary Service</a> Deadline 1 Submission – Comments on Relevant Representations
REP1-139	<a href="#">Winckworth Sherwood on behalf of Port of London Authority and Estuary Services Limited</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
REP1-140	<a href="#">Winckworth Sherwood on behalf of Estuary Services Limited</a> Deadline 1 Submission – Summary of Written Representations
REP1-141	<a href="#">Winckworth Sherwood on behalf of Estuary Services Limited</a> Deadline 1 Submission – Written Representation
REP1-142	<a href="#">Winckworth Sherwood on behalf of Port of London Authority</a> Deadline 1 Submission – Written Representation
REP1-143	<a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority</a> Deadline 1 Submission - Summary of Written Representation
REP1-144	<a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority and Estuary Services Limited</a> Deadline 1 – Post Hearing Submission for Issue Specific Hearing 2 including written submissions of oral case
REP1-145	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 1 Submission – Post hearing submissions for Issue Specific Hearing 2 including written submissions of oral case
REP1-146	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 1 Submission – Post Hearing Submission for Issue Specific Hearing 2 of oral case
REP1-147	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 1 Submission – Submission - Summary of Written Representation
REP1-148	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a>

	Deadline 1 Submission – Written Representations
REP1-149	<a href="#">Port of Tilbury London Limited</a> Deadline 1 Submission – Response to the Examining Authority's Written Questions
<b>Late Submission for Deadline 1</b>	
REP1-150	<a href="#">Royal Society for the Protection of Birds (RSPB)</a>
<b>Deadline 2 – 5 February 2019</b>	
<ul style="list-style-type: none"> <li>• Comments on WRs and responses to comments on RRs</li> <li>• Comments on Statements of Submission from Other Person</li> <li>• Comments on Local Impact Reports</li> <li>• Comments on responses to ExQ1</li> <li>• Revised draft DCO from Applicant</li> <li>• Responses to any further information requested by the ExA</li> <li>• Comments on any additional information/ submissions received by Deadline 1</li> </ul>	
REP2-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission - The Applicant's Response to Deadline 2, Submissions requested by the ExA and additional documents
REP2-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 24: Guide to the Application
REP2-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex A to Appendix 9: Requirements Needing Approval by Authorities
REP2-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex A to Appendix 21: HRA Matrices
REP2-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 10: Comments on Responses to the Examining Authority's First Written Questions - EXQ1
REP2-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 25: MCZ Assessment Clarification Note
REP2-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 18: Commercial Agreements Update Table
REP2-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex C to Appendix 10: ExQ 1.3.7 - PA2008 s127 Statutory Undertakers Land/Rights
REP2-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex D to Appendix 10: ExQ 1.3.8 - PA 2008 S138 Statutory Undertakers Apparatus etc
REP2-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 17: Landowner Update Table
REP2-011	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 2 Submission – Appendix 19: Revised Application Document. Doc 2.3 Land Plans (Onshore) – Revision D
REP2-012	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 4: Response to Written Representation - Pilotage
REP2-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 1: Responses to Written Representations
REP2-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 2: Response to Written Representations on the theme of Ports/Shipping Routes
REP2-015	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 27: Offshore Archaeology Draft Written Scheme of Investigation
REP2-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 5: Applicant's Response to Written Representation - Navigation Risk Assessment Methodology and Consultation
REP2-017	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex A to Appendix 13: Log of Changes to the Draft Development Consent Order
REP2-018	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 21: Report to Inform Appropriate Assessment - Part 1 of 2
REP2-019	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 21: Report to Inform Appropriate Assessment - Part 2 of 2
REP2-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 11: Comments on Interested Party Responses to ExA Action Points arising from Issue Specific Hearing 2 - Shipping and Navigation
REP2-021	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 8: Applicant's Response to Kent County Council Local Impact Report
REP2-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 7: Response to Thanet District Council's Local Impact Report
REP2-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex A to Appendix 10: ExQ 1.3.5 - Planning Act 2008 s.135 Crown Land and Consent
REP2-024	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex B to Appendix 10: ExQ 1.3.6 - List of all Objections to the Grant of Compulsory Acquisition or Temporary Possession Powers
REP2-025	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 2: Applicant's Response to ISH2 Action Point 8 - Amendments to the Red Line Boundary proposed by Interested Parties
REP2-026	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex A to Appendix 15: Book of Reference (Parts 1-5) Tracked changes since Deadline 1

REP2-027	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex A to Appendix 3: Tabular Responses to Shipping and Navigation Written Representation
REP2-028	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 15: Book of Reference (Parts 1-5)
REP2-029	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 16: Statement of Reasons
REP2-030	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix E to Appendix 10: MGN 543 Check List
REP2-031	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 13: Explanatory Memorandum
REP2-032	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 23: Saltmarsh Mitigation, Reinstatement and Monitoring Plan
REP2-033	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 22: Draft Site Integrity Plan
REP2-034	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Annex A to Appendix 12: Revised Draft Development Consent Order - Tracked Changes
REP2-035	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 12: Revised Draft Development Consent Order
REP2-036	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 14: Review of the Environment Statement following the removal of the Option 2 landfall design
REP2-037	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 Submission – Appendix 20: Special Category Land Plans
REP2-038	<a href="#">Vattenfall Wind Power Limited</a> Deadline 2 – Appendix 9: Response to Dover District Council's Local Impact Report
REP2-039	<a href="#">Estuary Services Limited</a> Deadline 2 Submission – Comments on Statement of Common Ground submitted at Deadline 1
REP2-040	<a href="#">Kent Wildlife Trust</a> Deadline 2 Submission – Comments on responses to the ExQ1
REP2-041	<a href="#">Maritime and Coastguard Agency</a> Deadline 2 Submission – Comments on responses to Relevant Representations, Comments on responses to ExQ1, Comments on responses to action points requested by the ExA arising from ISH2, Comments on additional submission received at Deadline 1 and late response to Deadline 1 ExQ1 1.12.10
REP2-042	<a href="#">Marine Management Organisation</a> Deadline 2 Submission – Comments on additional submission received at Deadline 1
REP2-043	<a href="#">National Trust</a>

	Deadline 2 Submission – Comments on additional submission received at Deadline 1
REP2-044	<a href="#">Natural England</a> Deadline 2 Submission – Comments on Written
REP2-045	<a href="#">Natural England</a> Deadline 2 Submission – Comments on responses to the ExQ1
REP2-046	<a href="#">Port of London Authority</a> Deadline 2 Submission – Comments on Statement of Common Ground submitted at Deadline 1
REP2-047	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 2 Submission – Comments on responses to the ExQ1
REP2-048	<a href="#">Sunk User Group</a> Deadline 2 Submission – Comments on responses to Relevant Representations
REP2-049	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 2 Submission – Comments on responses to action points requested by the ExA arising from ISH2
REP2-050	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 2 Submission – Comments on Written Representations, Comments on responses to action points requested by the ExA arising from ISH2, Comments on responses to the ExQ1 and Comments on Statement of Common Ground submitted at Deadline 1
REP2-051	<a href="#">Thanet Fishermens Association</a> Deadline 2 Submission - Comments on Statement of Submission and Comments on responses to Relevant Representations
REP2-052	<a href="#">Trinity House</a> Deadline 2 Submission – Comments on responses to the ExQ1

### **Deadline 3 – 5 March 2019**

- Responses to any further information requested by the ExA
- Post hearing submissions including written submissions of oral case
- Comments on any additional information/ submissions received by Deadline 2
- Applicant's Tracking List of SoCGs and agreements identifying any changes since Deadline 1
- Applicant's Tracking List of Application Documents and Plans identifying any changes since Deadline 1
- Applicant's Tracking List of changes to mitigation measures
- Requests from Interested Parties and Other Persons to be heard at ISH8, ISH9 and/ or CAH2 from 16 – 18 April 2019
- Statement of direction from the Applicant indicating that either changes to the application will be submitted at Deadline 4 or alternatively confirming that no such changes will be submitted.
- Confirmation by Port of Tilbury London Ltd. and London Gateway Port Ltd. of arrangements for an Accompanied Site Inspection (ASI2) to the Port of Tilbury, Tilbury 2 and London Gateway Port (the Thames Ports)<sup>1</sup> on 15 April 2019

<ul style="list-style-type: none"> <li>Requests from the Applicant, IPs and Other Persons to attend ASI2 to the Thames Ports</li> </ul>	
REP3-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Cover Letter
REP3-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline3 Submission - Appendix 1: Response to ExA Action Points arising from Issue Specific Hearing 3
REP3-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex A to Appendix 1: Revised Project Description Transcription note
REP3-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex B to Appendix 1: MCZ Chart illustrating Goodwin Sands with relevant projects
REP3-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 2: Response to ExA Action Points arising from Issue Specific Hearing 4
REP3-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex A to Appendix 2: ZTV and Wireframe Visualisations - Calais views from Ferry Route
REP3-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex B to Appendix 2: Kentish Flats Extensions SLVIA Documents
REP3-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex C to Appendix 2: Offshore Wind Farm Envelope Layout Examples
REP3-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 3: Response to ExA Action Points arising from Issue Specific Hearing 5
REP3-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 4: Response to ExA Action Points arising from Issue Specific Hearing 6
REP3-011	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 5: Funding Statement including Financial Statement 2017
REP3-012	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 6: Report Addressing Oral Submissions by Ramac Holdings Ltd. at Compulsory Acquisition Hearing 1 in relation to the Size of the Proposed Substation and the Substation Site Selection Process
REP3-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 7: Submission of International Maritime Organisation (IMO) Formal Safety Assessment (FSA) guidance
REP3-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 8: Response to Deadline 2 submissions by Shipping Interested Parties
REP3-015	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 3 Submission - Appendix 9: Written Summary of Vattenfall's Oral Case put at the Issue Specific Hearing 3 and Annexes
REP3-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 10: Written Summary of Vattenfall's Oral Case put at the Issue Specific Hearing 4
REP3-017	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 11: Written Summary of Oral Case put at the Issue Specific Hearing 5
REP3-018	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex A to Appendix 11: Written summary, Issue Specific Hearing 5, Agenda item 8 Aviation
REP3-019	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 12: Written Summary of Oral Case put at the Issue Specific Hearing 6
REP3-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 13: Written Summary of Oral Case put at the Issue Specific Hearing 7
REP3-021	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14: Written Summary of the Applicant's Oral Case put at Compulsory Acquisition Hearing 1 including Confirmation of Grid Connection Agreements
REP3-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.1 to 14.6b
REP3-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.10a to 14.11d
REP3-024	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.11e to 14.15a
REP3-025	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.15b to 14.17e
REP3-026	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.17f to 14.20a
REP3-027	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.20b to 14.22d
REP3-028	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.22e to 14.30
REP3-029	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.31 to 14.37
REP3-030	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages - Figures 14.38 to 14.41
REP3-031	<a href="#">Vattenfall Wind Power Limited</a>



	Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages – Figures 14.42 to 14.45
REP3-032	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages – Figures 14.6c to 14.7c
REP3-033	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 14.6: Figures and Photo Montages – Figures 14.7d to 14.9e
REP3-034	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 15: Response to Deadline 2 submissions by Interested Parties - Non shipping and navigation
REP3-035	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 16: Requests for Statements of Common Ground and Statement of Commonality
REP3-036	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 18: Statement of Common Ground – Environment Agency
REP3-037	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 21: Statement of Common Ground – Kent & Essex Inshore Fisheries Conservation Authority
REP3-038	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 22: Statement of Common Ground – Kent Wildlife Trust
REP3-039	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 23: Statement of Common Ground – Marine Management Organisation
REP3-040	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 24: Statement of Common Ground – National Trust
REP3-041	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 25: Statement of Common Ground – Natural England Offshore Ornithology:
REP3-042	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 26: Statement of Common Ground – Natural England Technical Topics (excluding Offshore Ornithology, Saltmarsh, and Site Selection)
REP3-043	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 27: Statement of Common Ground – Natural England Project Description, Site Selection and Alternatives; and Saltmarsh
REP3-044	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 28: Statement of Common Ground – Royal Yachting Association
REP3-045	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 30: Statement of Common Ground – Thanet District Council
REP3-046	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 31: Ministry of Defence Letter

REP3-047	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 32: Schedule of Mitigation
REP3-048	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 33: Revised Draft Development Consent Order
REP3-049	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex C to Appendix 33: Revised Draft Development Consent Order- Tracked Changes
REP3-050	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 34: Explanatory Memorandum
REP3-051	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex A to Appendix 34: Log of Changes to the Draft Development Consent Order
REP3-052	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex B to Appendix 34: Explanatory Memorandum – Tracked Changes
REP3-053	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Annex C to Appendix 34: Offshore Project Description Assessed in the Environmental Statement
REP3-054	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 24: Guide to the Application
REP3-055	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 36: Environmental Statement Addendum, Onshore Heritage
REP3-056	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 37: Onshore Archaeology - Outline Written Scheme of Investigation
REP3-057	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 38: In Principle Offshore Ornithology Monitoring Plan
REP3-058	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 39: Clarification Note on Collision Risk Modelling Parameters and Thanet Extension's Contribution to Cumulative and In-Combination Totals
REP3-059	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 40: Outline Shipping and Navigation Liaison Plan
REP3-060	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 41: Fisheries Liaison and Co-Existence Plan
REP3-061	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 42: ExQ 1.3.5 - Planning Act 2008 s.135 Crown Land and Consent
REP3-062	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 43: ExQ 1.3.6 - List of all objections to the Grant of Compulsory Acquisition or Temporary Possession Powers
REP3-063	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 44: Landowner Update Table

REP3-064	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 45: Commercial Agreements Update Table
REP3-065	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 46: ExQ 1.3.7 - PA2008 s127 Statutory Undertakers Land/ Rights
REP3-066	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 47: ExQ 1.3.8 - PA2008 s138 Statutory Undertakers Apparatus etc.
REP3-067	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission - Appendix 48: ISH3 Action Point 13 - Schedule of Monitoring
REP3-068	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 3 Submission - Response to action points requested by the Examining Authority for ISH 5
REP3-069	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 3 Submissions - Comments on Appendix 3 to Applicant's Deadline 2 Submission: Applicant's Response to Written Representations on the theme of Ports/Shipping Routes
REP3-070	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 3 Submission - Post hearing submissions including written submissions of oral case for ISH 5 and response to action points requested by the Examining Authority, matters outstanding from Deadline 1, comments on Deadline 2 submissions, arrangements for ASI2 and Planning Policy Position Paper
REP3-071	<a href="#">Trinity House</a> Deadline 3 Submission - Post hearing submissions including written submissions of oral case for ISH 5 and response to action points requested by the Examining Authority
REP3-072	<a href="#">Trinity House</a> Deadline 3 Submission - Post hearing submissions including written submissions of oral case for ISH 7 and response to action points requested by the Examining Authority
REP3-073	<a href="#">Trinity House</a> Deadline 3 Submission - Request to speak at Issue Specific Hearing 8 and 9
REP3-074	<a href="#">Natural England</a> Deadline 3 Submission - Response to action points requested by the Examining Authority for ISH 3 and clarification of position in relation to SoCG
REP3-075	<a href="#">Natural England</a> Deadline 3 submission - Comments on Clarification Notes Submitted at Deadline 1 and 2
REP3-076	<a href="#">Natural England</a> Deadline 3 submission - An email from the Environment Agency supporting Natural England's comments on the latest revision of the Saltmarsh Mitigation, Monitoring and Reinstatement Plan

REP3-077	<a href="#">Historic England</a> Deadline 3 Submission - Response to action points requested by the Examining Authority for ISH 4 and comments on revised dDCO submitted at Deadline 2
REP3-078	<a href="#">Marine Management Organisation</a> Deadline 3 Submission - Post hearing submissions including written submissions of oral case for ISH 3 and ISH 7, response to action points (ISH 3) requested by the Examining Authority and Comments on the Site Integrity Plan (SIP) submitted by the applicant at Deadline 2
REP3-079	<a href="#">Environment Agency</a> Deadline 3 Submission - Written Response
REP3-080	<a href="#">National Trust</a> Deadline 3 Submission - Post hearing submissions including written submissions of oral case for ISH 3 and response to action points requested by the Examining Authority
REP3-081	<a href="#">Kent Wildlife Trust</a> Deadline 3 Submission - Post hearing submissions including written submissions of oral case for ISH 3 and response to action points requested by the Examining Authority
REP3-082	<a href="#">Maritime &amp; Coastguard Agency</a> Deadline 3 Submission - Response to action points requested by the Examining Authority for ISH 5
REP3-083	<a href="#">London Pilots Council</a> Deadline 3 Submission - Response to action points requested by the Examining Authority for ISH 5
REP3-084	<a href="#">Ministry of Defence</a> Deadline 3 Submission - Response to action points requested by the Examining Authority
REP3-085	<a href="#">Thanet Fishermen's Association</a> Deadline 3 Submission - Post hearing submissions including written submissions of oral case for ISH 6 and response to action points requested by the Examining Authority
<b>Late Submission for Deadline 3</b>	
REP3-086	<a href="#">Vattenfall Wind Power Limited</a> Deadline 3 Submission – Appendix 19: Statement of Common Ground – Dover District Council. Late submission accepted at the discretion of the Examining Authority
REP3-087	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 3 Submission - Comments on Appendix 4 and 5 to Applicant’s Deadline 2 Submission - Pilotage and Navigation Risk Assessment Methodology and Consultation. Late submission accepted at the discretion of the Examining Authority
REP3-088	<a href="#">The Crown Estate</a> Post Compulsory Acquisition Hearing 1 (CAH1- 21 February 2019) Submission of Oral Case. Late submission accepted at the discretion of the Examining Authority
REP3-089	<a href="#">Natural England</a>

	Update following Deadline 3 in Respect of the HRA. Late submission accepted at the discretion of the Examining Authority
<b>Deadline 4 – 28 March 2019</b>	
<ul style="list-style-type: none"> <li>• Applicant’s revised draft DCO</li> <li>• Responses to any further information requested by the ExA</li> <li>• Comments on any additional information/ submissions received by Deadline 3</li> <li>• Receipt of report(s) from any Shipping and Navigation workshop(s) convened between the Applicant and any IPs attending ISH5 or 6</li> <li>• Request for change(s) and documented change(s) to the application (if any) from the Applicant</li> <li>• Parking and meeting locations, security and personal protective equipment requirements for attendees, transport arrangements for attendees within port perimeters, draft itinerary and maps for ASI2 from Port of Tilbury London Ltd. and London Gateway Port Ltd.</li> </ul>	
REP4-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Cover letter
REP4-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 1: Guide to the Application
REP4-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 2: Draft Development Consent Order
REP4-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Annex A to Appendix 2: Draft Development Consent Order (Tracked Changes)
REP4-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 3: Response to Deadline 3 Submissions by Interested Parties.
REP4-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 4: Response to Deadline 3 Submissions by Interested Parties - Shipping and Navigation
REP4-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 5: Responses to comments on Shipping Policy Considerations
REP4-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 6: Onshore Archaeology: Draft Written Scheme of Investigation
REP4-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 7: Explanatory Memorandum
REP4-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Annex A to Appendix 7: DCO Changes Log
REP4-11	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Annex B to Appendix 7: Explanatory Memorandum - Tracked Changes
REP4-012	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 4 Submission - Appendix 8: ExQ 1.3.5 - Planning Act 2008 s.135 Crown Land and Consent
REP4-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 9: ExQ 1.3.6 List of all Objections to the Grant of Compulsory Acquisition of Temporary Possession Powers
REP4-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 10: Landowner Update Table
REP4-015	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 11: Commercial Agreements Update Tables
REP4-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 12: ExQ 1.3.7 - Planning Act 2008 s.127 Statutory Undertakers Land Rights
REP4-017	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 13: ExQ 1.3.8 - Planning Act 2008 s.138 Statutory Undertakers Apparatus etc.
REP4-018	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 14: Structures Exclusion Zone
REP4-019	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 15: Sandwave Clearance, Dredge and Disposal Site Characterisation
REP4-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 16: Saltmarsh Mitigation, Reinstatement and Monitoring Plan
REP4-021	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 17: Offshore Archaeology - Draft Written Scheme of Investigation
REP4-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 18: Draft Site Integrity Plan
REP4-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 19: The consequences of the SEZ on assessment of Red-throated Diver interest feature of OTE SPA alone and in-combination
REP4-024	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 20: MCZ Assessment Clarification Note
REP4-025	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 21: Reef Biogenic Mitigation Plan
REP4-026	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 22: Outline Offshore Operation and Maintenance Plan
REP4-027	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 23: Review of the Environment Statement and Report to Inform Appropriate Assessment in relation to the Structure Exclusion Zone
REP4-028	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 24: Offshore Works Plan

REP4-029	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 25: Offshore Ornithology In-combination Effects Position Paper on Kittiwake and the FCC SPA
REP4-030	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission - Appendix 27: Data Analysis and Validation Paper
REP4-031	<a href="#">Marine Management Organisation</a> Deadline 4 Submission - Comments on submissions received by Deadline 3 including a summary of issues that remain outstanding and comments on the Applicant's draft Development Consent Order Revision C
REP4-032	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 4 Submission Comments on submissions received by Deadline 3 including Action Points from ISH5
REP4-033	<a href="#">Natural England</a> Deadline 4 Submission - Comments on submissions received by Deadline 3
REP4-034	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 4 Submission - Comments on submissions received by Deadline 3 including Action Points from ISH5 and ISH6
<b>Late Submission for Deadline 4</b>	
REP4-035	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4 Submission – Outline Navigational Risk Assessment Addendum and Hazard Logs. Late Submission accepted at the discretion of the Examining Authority
<b>Deadline 4B - 05 April 2019</b>	
<ul style="list-style-type: none"> <li>• A revised Navigation Risk Assessment (NRA) to support the SEZ proposal submitted at Deadline 4</li> <li>• An addendum to the Environmental Statement (ES) assessing the SEZ proposal submitted at Deadline 4</li> <li>• Any other documents required to record and justify the SEZ proposal submitted at Deadline 4 and that were not submitted at Deadline 4</li> </ul>	
REP4B-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Cover Letter. Late Submission accepted at the discretion of the Examining Authority.
REP4B-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4b Submission - Appendix 1: Addendum to Navigation Risk Assessment. Late Submission accepted at the discretion of the Examining Authority
REP4B-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex A to Appendix 1: IALA MSP guidance. Late Submission accepted at the discretion of the Examining Authority

REP4B-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex B to Appendix 1: PLA NRA narrative and matrix. Late Submission accepted at the discretion of the Examining Authority
REP4B-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex C to Appendix 1: Hazard workshop minutes as agreed by Trinity/MCA/Simon Moore. Late Submission accepted at the discretion of the Examining Authority
REP4B-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex D to Appendix 1: Hazard Information Pack. Late Submission accepted at the discretion of the Examining Authority
REP4B-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex E to Appendix 1: Pilotage class as provided by LPC. Late Submission accepted at the discretion of the Examining Authority
REP4B-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex F to Appendix 1: Hazard Logs. Late Submission accepted at the discretion of the Examining Authority
REP4B-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Appendix 2: Review of Application Documents with regards to the Structures Exclusion Zone. Late Submission accepted at the discretion of the Examining Authority
REP4B-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Appendix 3: An addendum to the Environmental Statement (ES) assessing the SEZ proposal. Late Submission accepted at the discretion of the Examining Authority
REP4B-011	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission Annex A to Appendix 3: Implications of the SEZ – Seascape, Landscape and Visual Effects. Late Submission accepted at the discretion of the Examining Authority
REP4B-012	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission Annex A1 to Appendix 3 - Implications of the SEZ – Seascape, Landscape and Visual Effects - Wirelines. Late Submission accepted at the discretion of the Examining Authority
REP4B-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex B to Appendix 3: Structure Exclusion Zone, Onshore Heritage. Late Submission accepted at the discretion of the Examining Authority
REP4B-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex C to Appendix 3: Assessment of the implications of the implementation of the Structures Exclusion Zone in relation to commercial fisheries . Late Submission accepted at the discretion of the Examining Authority



REP4B-015	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Appendix 4: Addendum to the Report to Inform Appropriate Assessment. Late Submission accepted at the discretion of the Examining Authority
REP4B-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Annex A to Appendix 4: The consequences of the SEZ on assessment of the Outer Thames Estuary and Flamborough and Filey Coast SPAs (as submitted in Deadline 4). Late Submission accepted at the discretion of the Examining Authority
REP4B-017	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Appendix 5: Crown Land Plan. Late Submission accepted at the discretion of the Examining Authority
REP4B-018	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Appendix 6: Extinguishment of Public Rights of Way Navigation Plan. Late Submission accepted at the discretion of the Examining Authority
REP4B-019	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Appendix 7: Radar Line of Sight Coverage Plan. Late Submission accepted at the discretion of the Examining Authority
REP4B-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Appendix 8: Guide to the Application. Late Submission accepted at the discretion of the Examining Authority
REP4B-021	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Appendix 9: Revised Draft Development Consent Order - Tracked Changes. Late Submission accepted at the discretion of the Examining Authority
REP4B-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission Superseded by Annex A to Appendix 3: Implications of the SEZ – Seascape, Landscape and Visual Effects. Late Submission accepted at the discretion of the Examining Authority
REP4B-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4B Submission - Superseded by Annex A1 to Appendix 1: Implications of the SEZ – Seascape, Landscape and Visual Effects – Wirelines. Late Submission accepted at the discretion of the Examining Authority
<b>Deadline 4C - 10 April 2019</b>	
<ul style="list-style-type: none"> <li>• Lists of ports, shipping, pilotage and navigation safety experts intending to appear at ISH8.</li> <li>• Submission of statements of evidence to be prepared by or for the Applicant and/ or IPs requesting to be heard to inform ISH8</li> </ul>	
REP4C-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Cover Letter
REP4C-002	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 4C Submission - Appendix 1: Interested Parties identified for consultation on the Structure Exclusion Zone
REP4C-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Appendix 2: Shipping and Navigation - Statement of Evidence
REP4C-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Annex A to Appendix 2: Shipping and Navigation – Statement of Evidence Accompanying Figures
REP4C-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Appendix 3: Thanet Offshore Wind Farm: A Post-Construction Monitoring Survey of Benthic Resources
REP4C-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Appendix 4: PD Audit - Offshore Project Description Assessed in the Environmental Statement
REP4C-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Appendix 5: Response to Deadline 4 Submissions by Interested Parties
REP4C-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Appendix 6: Statement of Common Ground – Natural England - Offshore ornithology
REP4C-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Appendix 7: Fish Clarification Note
REP4C-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Annex A to Appendix 7: Herring and sole spawning potential calculations
REP4C-011	<a href="#">Vattenfall Wind Power Limited</a> Deadline 4C Submission - Appendix 8: Guide to the Application
REP4C-012	<a href="#">London Pilot Council</a> Deadline 4C Submission - Written Representation
REP4C-013	<a href="#">Marine Management Organisation</a> Deadline 4C Submission - Notification of requested attendees at ISH8 and ISH9
REP4C-014	<a href="#">Maritime &amp; Coastal Agency</a> Deadline 4C Submission - SEZ ExA
REP4C-015	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 4C Submission - Written Representation
REP4C-016	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 4C Submission - Appendix 1 HRW Report
REP4C-017	<a href="#">Trinity House</a> Deadline 4C Submission - Notification of requested attendees at ISH8 and ISH9
REP4C-018	<a href="#">Trinity House</a> Deadline 4C Submission - Written Representation
REP4C-019	<a href="#">UK Chamber of Shipping</a> Deadline 4C Submission - Written Representation
<b>Deadline 5 – 29 April 2019</b>	
<ul style="list-style-type: none"> <li>• Revised and progress versions of SoCGs</li> <li>• Responses to ExA’s Further Written Questions (ExQ2)</li> </ul>	

- Comments on Applicant's revised dDCO
- Responses to any further information requested by the ExA (specifically including any 'action points' arising from hearings) Post hearing submissions including written submissions of oral case
- Comments on any additional information/ submissions received by Deadline 4, 4B and 4C Submission to the ExA by the Applicant of the SEZ Material Change consultation package as published
- Submission to the ExA of comments on the SEZ Material Change application and related documents submitted at D4 and D4B by IPs and OPs already within the Examination

REP5-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - The Applicant's response to Deadline 5 Cover Letter
REP5-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 1 to Deadline 5 Submission: Applicant's Responses to the Examining Authority's Second Written Questions - EXQ2
REP5-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex A to Appendix 1 to Deadline 5 Submission: Response to ExAQ2.1.8a
REP5-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex B to Appendix 1 to Deadline 5 Submission: Applicant's response to ExQ2 2.3.3
REP5-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex C to Appendix 1 to Deadline 5 Submission: Plan as requested in ExQ 2.3.6
REP5-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 2 to Deadline 5 Submission: Onshore Archaeology - Outline Written Scheme of Investigation
REP5-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 3 to Deadline 5 Submission: Schedule of Mitigation
REP5-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex A to Appendix 3 to Deadline 5 Submission: Applicant's response to Natural England's Representation
REP5-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 4 to Deadline 5 Submission: HSE Guidelines (1999)
REP5-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 5 to Deadline 5 Submission: Design and Access Statement
REP5-011	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 6 to Deadline 5 Submission: Schedule of Monitoring
REP5-012	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 5 Submission - Appendix 7 to Deadline 5 Submission: Response to ExA Action points arising from Issue Specific Hearing 8 - Shipping and Navigation
REP5-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex A to Appendix 7 to Deadline 5 Submission: Response to ISH8 Action Point 16: Thanet Extension Structures Exclusion Zone Consented Works Clarification Note
REP5-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex B to Appendix 7 to Deadline 5 Submission: Marine Spatial Planning document
REP5-015	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 8 to Deadline 5 Submission: Response to ExA Action points arising from Issue Specific Hearing 8 - Natural Environment and Commercial Fishing
REP5-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex A to Appendix 8 to Deadline 5 Submission: Applicants Response to ISH8 Action Points 1 (b), 2 (d) and 9 (b)
REP5-017	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 10 to Deadline 5 submission: Response to ExA Action Points arising from Compulsory Acquisition Hearing No. 2
REP5-018	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 12 to deadline 5 Submission: Written Summary of Vattenfall's Oral Case put at the ISH8 - Shipping and Navigation
REP5-019	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 13 to Deadline 5 Submission: Revised Draft Development Consent Order
REP5-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 14 to Deadline 5 Submission: Written Summary of Vattenfall's Oral Case put at the Compulsory Acquisition Hearing 2
REP5-021	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 15 to Deadline 5 Submission: Written Summary of Vattenfall's Oral Case put at the Issue Specific Hearing 9
REP5-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex A to Appendix 15 to Deadline 5 Submission: Submissions made in the examination proceedings of Norfolk Vanguard and Hornsea Project Three, in relation to arbitration
REP5-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex B to Appendix 15 to Deadline 5 Submission: Counsel's written opinion, in relation to arbitration
REP5-024	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 16 to Deadline 5 Submission: Response to LPC Deadline 4C Submission
REP5-025	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 5 Submission - Appendix 17 to Deadline 5 Submission: SEZ Material Change Consultation Pack - Part 1
REP5-026	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 17 to Deadline 5 Submission: SEZ Material Change Consultation Pack - Part 2
REP5-027	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 17 to Deadline 5 Submission: SEZ Material Change Consultation Pack - Part 3
REP5-028	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 17 to Deadline 5 Submission: SEZ Material Change Consultation Pack - Part 4
REP5-029	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 18 to Deadline 5 submission: Requests for Statements of Common Ground and Statement of Commonality
REP5-030	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 19 to Deadline 5 Submission: Written Summary of Vattenfall's Oral Case put at the Issue Specific Hearing 8 - Biodiversity, Ecology and Natural Environment Considerations
REP5-031	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 20 to Deadline 5 Submission: Written Summary of Vattenfall's Oral Case put at the Issue Specific Hearing 8 for commercial Fishing and Fisheries
REP5-032	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 21 to Deadline 5 Submission: ExQ 1.3.5: Planning Act 2008 s.135 Crown Land and Consent
REP5-033	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 22 to Deadline 5 Submission: List of All Objections to the Grant of Compulsory Acquisition or Temporary Possession Powers (ExQ1 1.3.6)
REP5-034	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 23 to Deadline 5 Submission: Landowner Update Table
REP5-035	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 24 to Deadline 5 Submission: Commercial Agreements Update Table
REP5-036	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 25 to Deadline 5 Submission: ExQ 1.3.7: PA2008 s127 Statutory Undertakers Land/Rights
REP5-037	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 26 to Deadline 5 Submission: ExQ 1.3.8: PA2008 s138 Statutory Undertakers Apparatus etc.
REP5-038	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 27 to Deadline 5 Submission: Sand Wave Clearance, Dredging and Drill Arising: Disposal Site Characterisation

REP5-039	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission- Appendix 28 to Deadline 5 Submission: Addendum to Navigation Risk Assessment
REP5-040	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex F Appendix 28 to Deadline 5 Submission: Revised NRA Addendum Hazard Logs
REP5-041	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 29 to Deadline 5 Submission: Guide to the Application
REP5-042	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 31 to Deadline 5 Submission: Explanatory Memorandum
REP5-043	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex A to Appendix 31 to Deadline 5 Submission: Log of Changes to the draft Development Consent Order
REP5-044	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex B to Appendix 31 to Deadline 5 Submission: Explanatory Memorandum - Tracked Changes
REP5-045	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission- Annex C to Appendix 31 to Deadline 5 Submission: Revised Draft Development Consent Order - Tracked Changes
REP5-046	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Annex D to Appendix 31 to Deadline 5 Submission - Offshore Project Description Assessed in the Environmental Statement
REP5-047	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 32 to Deadline 5 Submission: SAC and MCZ Clarification Note and Annexes
REP5-048	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 33 to Deadline 5 Submission: Statement of Common Ground - Kent & Essex Inshore Fisheries Conservation Authority
REP5-049	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 34 to Deadline 5 Submission: Statement of Common Ground - Marine Management Organisation
REP5-050	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 35 to Deadline 5 Submission: Statement of Common Ground - Historic England
REP5-051	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 36 to Deadline 5 Submission: Statement of Common Ground - Kent County Council
REP5-052	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 37 to Deadline 5 Submission: Statement of Common Ground - Natural England Project Description, Site Selection and Alternatives; and Saltmars
REP5-053	<a href="#">The Crown Estate</a>

	Deadline 5 Submission - Response to action points requested by the Examining Authority for ISH 8
REP5-054	<a href="#">The Crown Estate</a> Deadline 5 Submission - Response to ExA's Further Written Questions (ExQ2)
REP5-055	<a href="#">Charles Russell Speechlys on behalf of RAMAC Holding Limited</a> Deadline 5 Submission - Post hearing submissions including written submissions of oral case for CAH2 and response to ExA's Further Written Questions (ExQ2)
REP5-056	<a href="#">Dover District Council</a> Deadline 5 Submission - Response to ExA's Further Written Questions (ExQ2)
REP5-057	<a href="#">Dover District Council</a> Deadline 5 Submission - Response to action points requested by the Examining Authority for ISH 8
REP5-058	<a href="#">Environment Agency</a> Deadline 5 Submission - Response to ExA's Further Written Questions (ExQ2)
REP5-059	<a href="#">Historic England</a> Deadline 5 Submission - Response to ExA's Further Written Questions (ExQ2) and comments on revised draft Development Consent Order Revision C submitted for deadline 2
REP5-060	<a href="#">Kent County Council</a> Deadline 5 Submission - Response to ExA's Further Written Questions (ExQ2)
REP5-061	<a href="#">London Pilots Council</a> Deadline 5 Submission - Response to action points requested by the Examining Authority for ISH 8
REP5-062	<a href="#">Marine Management Organisation</a> Deadline 5 Submission - Response to submissions received at deadline 4, 4b and 4c. Comments on revised draft Development Consent Order Revision E submitted for Deadline 4. Response to action points requested by the Examining Authority for ISH 8 and ISH9 and response to ExA's Further Written Questions (ExQ2)
REP5-063	<a href="#">Maritime and Coastguard Agency</a> Deadline 5 Submission - Response to action points requested by the Examining Authority for ISH 8
REP5-064	<a href="#">Natural England</a> Deadline 5 Submission - Response to submissions received at deadline 4, 4b and 4c and comments on revised draft Development Consent Order Revision E submitted for Deadline 4
REP5-065	<a href="#">Natural England</a> Deadline 5 Submission - Response to ExA's Further Written Questions (ExQ2)
REP5-066	<a href="#">Natural England</a> Deadline 5 Submission - Response to action points requested by the Examining Authority for ISH 8
REP5-067	<a href="#">Port of London Authority and Estuary Services Limited</a>

	Deadline 5 Submission - Post hearing submissions including written submissions of oral case for ISH 8
REP5-068	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 5 Submission - Post hearing submissions including written submissions of oral case for ISH 9 and comments on revised draft Development Consent Order Revision E submitted for Deadline 4
REP5-069	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 5 Submission - Response to submissions received at deadline 4, 4b and 4c and comments on SEZ Material Change Consultation
REP5-070	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 5 Submission - Response to action points requested by the Examining Authority for ISH 8
REP5-071	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 5 Submission - Post hearing submissions including written submissions of oral case for ISH 8. Response to action points requested by the Examining Authority for ISH 8. Response to submissions received at deadline 4, 4b and 4c
REP5-072	<a href="#">Thanet Fishermens Association</a> Deadline 5 Submission - Response to action points requested by the Examining Authority for ISH 8
REP5-073	<a href="#">Trinity House</a> Deadline 5 Submission - Post hearing submissions including written submissions of oral case for ISH 9. Response to action points requested by the Examining Authority for ISH 9 and comments on revised draft Development Consent Order Revision E (tracked) submitted for Deadline 4b
REP5-074	<a href="#">Trinity House</a> Deadline 5 Submission - Response to action points requested by the Examining Authority for ISH 8
<b>Late Submission for Deadline 5</b>	
REP5-075	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Updated Appendix 37 - Statement of Common Ground - Natural England Project Description, Site Selection and Alternatives; and Saltmarsh - Late Submission accepted at the discretion of the Examining Authority
REP5-076	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 38 - Statement of Common Ground - Natural England Technical Topics (excluding Offshore Ornithology, Saltmarsh, and Site Selection) - Late Submission accepted at the discretion of the Examining Authority
REP5-077	<a href="#">Vattenfall Wind Power Limited</a> Deadline 5 Submission - Appendix 39 - Statement of Common Ground - Natural England - Offshore Ornithology - Late Submission accepted at the discretion of the Examining Authority



REP5-078	<a href="#">The Crown Estate</a> Response to Examining Authority's Further Written Questions (ExQ2) Question ExQ2.3.4 - Late Submission accepted at the discretion of the Examining Authority
<b>Deadline 5A – 3 May 2019</b>	
<ul style="list-style-type: none"> <li>• Comments on any revised dDCO submitted by the Applicant at Deadline 5</li> </ul>	
REP5A-001	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 5A Submission - Comments on any revised dDCO submitted by the Applicant at Deadline 5
REP5A-002	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 5A Submission - Comments on any revised dDCO submitted by the Applicant at Deadline 5
REP5A-003	<a href="#">Marine Management Organisation</a> Deadline 5A Submission - Comments on any revised dDCO submitted by the Applicant at Deadline 5
REP5A-004	<a href="#">Maritime and Coastguard Agency</a> Deadline 5A Submission - Comments on any revised dDCO submitted by the Applicant at Deadline 5
REP5A-005	<a href="#">Natural England</a> Deadline 5A Submission - Comments on any revised dDCO submitted by the Applicant at Deadline 5
REP5A-006	<a href="#">Trinity House</a> Deadline 5A Submission - Comments on any revised dDCO submitted by the Applicant at Deadline 5
<b>Deadline 6 – 28 May 2019</b>	
<ul style="list-style-type: none"> <li>• Final SoCGs</li> <li>• Responses to ExA's Further Written Questions (ExQ3) (if published)</li> <li>• Comments on responses to the ExA's Further Written Questions (ExQ2)</li> <li>• Comments on the ExA's preferred dDCO or dDCO commentary (if required)</li> <li>• Comments on the RIES (if published)</li> <li>• Responses to any further information requested by the ExA</li> <li>• Comments on any additional information/ submissions received by Deadline 5 and 5A</li> <li>• Submission to the ExA by the Applicant of the SEZ Material Change Consultation Report (described in Annex C to the R8(3) and R9 Letter of 9 April) and any supporting documents</li> <li>• Submission to the ExA of comments on D5 submissions on the SEZ Material Change application by IPs and OPs already within the Examination</li> <li>• Submission of requests to become an IP or OP from any person responding to the Applicant's SEZ Material Change consultation package who is not already involved in the Examination</li> <li>• Statements of submissions by persons requesting to become an IP or OP in response to the Applicant's SEZ Material Change consultation package and who are not already involved in the Examination</li> </ul>	
REP6-001	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 6 Submission - Cover letter. Late Submission accepted at the discretion of the Examining Authority
REP6-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 1: Guide to the Application. Late Submission accepted at the discretion of the Examining Authority
REP6-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 2: Requests for Statements of Common Ground and Statement of Commonality - Shipping and Navigation
REP6-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 3: Requests for Statements of Common Ground and Statement of Commonality - Non-Shipping and Navigation
REP6-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 4: Statement of Common Ground – Chamber of Shipping
REP6-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 5: Statement of Common Ground – Estuary Services Limited
REP6-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 6: Statement of Common Ground – Historic England
REP6-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 7: Statement of Common Ground – Kent & Essex Inshore Fisheries Conservation Authority
REP6-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 8: Statement of Common Ground – Kent County Council
REP6-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 9: Statement of Common Ground – Kent Wildlife Trust
REP6-011	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission -Appendix 11: Statement of Common Ground – Marine Management Organisation
REP6-012	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 11: MMO's tracker of consultation between the parties
REP6-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 12: Statement of Common Ground – Maritime & Coastguard Agency
REP6-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission -Appendix 13: Statement of Common Ground – National Trust
REP6-015	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 14: Statement of Common Ground – Natural England Offshore Ornithology
REP6-016	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 6 Submission - Appendix 15: Statement of Common Ground – Natural England Technical Topics (excluding Offshore Ornithology, Saltmarsh, and Site Selection)
REP6-017	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 15: Responses to Natural England Residual Goodwin Sands pMCZ comments
REP6-018	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex B to Appendix 15: Responses to Natural England on the potential sand wave clearance and displacement of material from Goodwin Sands pMCZ
REP6-019	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 16: Statement of Common Ground – Natural England - Project Description, Site Selection and Alternatives; and Saltmarsh
REP6-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex C to Appendix 26: Shipping commercial assessment (Correction from the originally submitted title of Appendix 16 C)
REP6-021	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 17: Statement of Common Ground – Port of London Authority
REP6-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 18: Statement of Common Ground – Port of Tilbury and London Gateway Port Limited
REP6-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 19: Statement of Common Ground – RiverOak Strategic Partners Limited (RSP)
REP6-024	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 20: Statement of Common Ground - Thanet Fishermen’s Association
REP6-025	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 21: Statement of Common Ground – Trinity House Lighthouse Service (TH)
REP6-026	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 22: Responses to ExA’s Further Written Questions (ExQ3)
REP6-027	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 22: Supporting figures for the Applicant's response to ExA's Further Written Questions (ExQ3)
REP6-028	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex B to Appendix 22: PLA published risk assessment template
REP6-029	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex C to Appendix 22: Supplementary Note to ExAQ3.12.34
REP6-030	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex D to Appendix 22: ESL Service Restrictions
REP6-031	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 6 Submission - Annex E to Appendix 22: Supporting figure for the Applicant's response to ExQ3 3.10.4
REP6-032	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 23: Applicant's Comments on Responses to the Examining Authority's Second Written Questions – EXQ2
REP6-033	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 23: The Crown Estate Letter
REP6-034	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 24: Applicant's comments on the ExA's preferred dDCO or dDCO commentary. This document should be read in conjunction with REP6A-015
REP6-035	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 24: Email correspondence between the Applicant and THE Centre for Effective Dispute Resolution
REP6-036	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex B to Appendix 24: Email correspondence between the Applicant and Thanet District Council
REP6-037	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 25: Applicant's Comments on the Report on the Implications for European Sites (RIES)
REP6-038	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 submission - Appendix 26: Response to Deadline 5 Submissions by Interested Parties - Shipping and Navigation. Late Submission accepted at the discretion of the Examining Authority
REP6-039	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 26: Summary Response to Deadline 5 Shipping and Navigation Submissions
REP6-040	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex B to Appendix 26: Applicant's Response to HR Wallingford's Final Report
REP6-041	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex E to Appendix 26: Supporting figures for the Applicant's Response to Deadline 5 Shipping and Navigation Submissions
REP6-042	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 27: Response to Deadline 5 Submissions by Interested Parties
REP6-043	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 27: Response to MMO D5a submission on seasonal restriction
REP6-044	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 28: SEZ Material Change Consultation Report
REP6-045	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 28: Copy of the consultation notification letter sent to consultees.

REP6-046	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex B to Appendix 28: Copy of the consultation notification email sent to consultees.
REP6-047	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex C to Appendix 28: SEZ Material Change. List of consultees and consultation tracker.
REP6-048	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex D to Appendix 28: Copies of responses receive from consultees.
REP6-049	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex E to Appendix 28: Applicant's Response to Port of London Authority and Estuary Services Ltd Consultation Response
REP6-050	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 29: Planning Act 2008 s.135 Crown Land and Consent
REP6-051	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 30: List of All Objections to the Grant of Compulsory Acquisition or Temporary Possession Powers (ExQ1 1.3.6)
REP6-052	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 31: Landowner Update Table
REP6-053	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 32: Commercial Agreements Table
REP6-054	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 33: ExQ 1.3.7: PA2008 s127 Statutory Undertakers Land/ Rights
REP6-055	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 34: ExQ 1.3.8: PA2008 s138 Statutory Undertakers Apparatus etc.
REP6-056	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 35: CAH Hearing 1 Action - Evidence of the need for retention of all three route options in relation to work no.16
REP6-057	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 36: Fisheries Liaison Co-existence Plan. Late Submission accepted at the discretion of the Examining Authority
REP6-058	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 38: ISH 8: ExQ Action Point 20: Pilot Transfer Bridge Simulation Study Specification. Late Submission accepted at the discretion of the Examining Authority.
REP6-059	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 39: CAH2 - Status of National Trust agreement on Compulsory Acquisition. Late Submission accepted at the discretion of the Examining Authority.
REP6-060	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 6 Submission - Appendix 41: AIS Animations Note. Late Submission accepted at the discretion of the Examining Authority.
REP6-061	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex A to Appendix 41: Busiest day animation - vessels over 90 m
REP6-062	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex B to Annex 41: Busiest day - all vessels. Late Submission accepted at the discretion of the Examining Authority.
REP6-063	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex C to Appendix 41: Adverse metocean conditions and restricted ESL pilotage operations. Late Submission accepted at the discretion of the Examining Authority
REP6-064	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 42: Thanet Offshore Wind Farm Collision Assessment of Proposed Extension. Late Submission accepted at the discretion of the Examining Authority
REP6-065	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 43: Applicant's Response to Natural England's responses to ISH8 Action Points and the Applicant's Deadline 5 Submissions on HRA matters (offshore ornithology and marine mammals). Late Submission accepted at the discretion of the Examining Authority
REP6-066	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 44: Applicant's response to commentary of dDCO from Interested Parties. Late Submission accepted at the discretion of the Examining Authority.
REP6-067	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 47: Statement of Common Ground – Ramac. Late Submission accepted at the discretion of the Examining Authority
REP6-068	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 49: Revised Draft Development Consent Order. Late Submission accepted at the discretion of the Examining Authority. The Applicant has advised the Planning Inspectorate some formatting – specifically the number alignment – in this non-tracked changes version of the DCO (Appendix 49) is incorrect. The content within the document is correct. The formatting is correct in the track changes version (Annex C of Appendix 50). Readers wishing to see the content in the correct format are referred to Annex C of Appendix 50. Appendix 49 will be replaced with a correctly formatted version at Deadline 7.
REP6-069	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 50: Explanatory Memorandum. Late Submission accepted at the discretion of the Examining Authority
REP6-070	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 6 Submission - Annex A to Appendix 50: DCO changes log. Late Submission accepted at the discretion of the Examining Authority
REP6-071	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex B to Appendix 50: Explanatory Memorandum (Tracked changes). Late Submission accepted at the discretion of the Examining Authority.
REP6-072	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex C to Appendix 50: Revised Draft Development Consent Order - Tracked. Late Submission accepted at the discretion of the Examining Authority.
REP6-073	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Annex D to Appendix 50: Offshore Project Description Assessed in the Environmental Statement. Late Submission accepted at the discretion of the Examining Authority
REP6-074	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 51: ISH7 - Action Point 13 - Grid Coordinate audit. Late Submission accepted at the discretion of the Examining Authority
REP6-075	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 52: Schedule of Mitigation. Late Submission accepted at the discretion of the Examining Authority
REP6-076	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 56: Onshore WSI. Late Submission accepted at the discretion of the Examining Authority
REP6-077	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6 Submission - Appendix 58: Outline Site Integrity Plan (Check Name). Late Submission accepted at the discretion of the Examining Authority
REP6-078	<a href="#">Dover District Council</a> Deadline 6 Submission - Comments on the Examining Authority's dDCO Commentary
REP6-079	<a href="#">Kent County Council</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3)
REP6-080	<a href="#">Charles Russell Speechlys on behalf of RAMAC Holding Limited</a> Deadline 6 Submission - Comments on Applicant's submissions received by Deadline 5
REP6-081	<a href="#">Environment Agency</a> Deadline 6 Submission - Comments on the Examining Authority's dDCO Commentary
REP6-082	<a href="#">Estuary Services Limited</a> Deadline 6 Submission - Comments on Statement of Common Ground (SoCG)
REP6-083	<a href="#">Historic England</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3)
REP6-084	<a href="#">Historic England</a>

	Deadline 6 Submission - Comments on the Examining Authority's dDCO Commentary
REP6-085	<a href="#">Kent Wildlife Trust</a> Deadline 6 Submission - Comments on D5 submissions on the SEZ Material Change application
REP6-086	<a href="#">London Gateway Port Limited</a> Deadline 6 Submission - Signed Statement of Common Ground (SoCG)
REP6-087	<a href="#">Maritime and Coastal Agency</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3) and Comments on the Examining Authority's dDCO Commentary
REP6-088	<a href="#">Marine Management Organisation</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3), Comments on the Examining Authority's dDCO Commentary, Comments on the Applicant's Draft Development Consent Order (dDCO) Revision E and Comments on D5 submissions on the SEZ Material Change application
REP6-089	<a href="#">Marine Management Organisation</a> Deadline 6 Submission - Original Piling Restrictions in respect of Thanet OFW.
REP6-090	<a href="#">NATS</a> Deadline 6 Submission - Comments on D5 submissions on the SEZ Material Change application
REP6-091	<a href="#">National Trust</a> Deadline 6 Submission - Response to CAH2 Hearing Action Point requested for Deadline 6
REP6-092	<a href="#">Natural England</a> Deadline 6 Submission - Comments on the Examining Authority's dDCO Commentary
REP6-093	<a href="#">Natural England</a> Deadline 6 Submission - Comments on responses to the ExA's Further Written Questions (ExQ2)
REP6-094	<a href="#">Natural England</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3)
REP6-095	<a href="#">Natural England</a> Deadline 6 Submission - Comments on Applicant's submissions received by Deadline 5, Comments on the RIES and Comments on the Examining Authority's dDCO Commentary
REP6-096	<a href="#">Port of London Authority</a> Deadline 6 Submission - Comments on Statement of Common Ground (SoCG)
REP6-097	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 6 Submission - Comments on D5 submissions on the SEZ Material Change application
REP6-098	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 6 Submission - Comments on the Examining Authority's dDCO Commentary
REP6-099	<a href="#">Port of London Authority and Estuary Services Limited</a>



	Deadline 6 Submission - Response to action point 20 from ISH8 requested for Deadline 6
REP6-100	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 6 Submission - Comments in relation to submissions of the London Pilot's Council
REP6-101	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 6 Submission - Comments on the Applicant's responses to ISH8 action points
REP6-102	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 6 Submission - Comments on D5 submissions on the SEZ Material Change application
REP6-103	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3)
REP6-104	<a href="#">Port of Sheerness Ltd</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3)
REP6-105	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 6 Submission - Comments on Applicant's submissions received by Deadline 5, Response to ExA's Further Written Questions (ExQ3), response to ISH8 action points, Comments on the Examining Authority's dDCO Commentary
REP6-106	<a href="#">Port of Tilbury London Limited</a> Deadline 6 Submission - Signed Statement of Common Ground (SoCG)
REP6-107	<a href="#">Thanet Fishermen's Association</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3)
REP6-108	<a href="#">Trinity House</a> Deadline 6 Submission - Response to ExA's Further Written Questions (ExQ3) and Comments on the Examining Authority's dDCO Commentary
<b>Deadline 6A – 3 June 2019</b>	
<ul style="list-style-type: none"> <li>• Response to the ExA's Further requests for information under EPR Rule 17</li> </ul>	
REP6A-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Cover Letter
REP6A-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Appendix 1 to Deadline 6A Submission: Applicant's Responses to the ExA's further requests for information under EPR Rule 17
REP6A-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Annex A to Appendix 1 to Deadline 6A Submission: Applicant's response to ExA's further requests for information under EPR Rule 17 – 4.12.7
REP6A-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Annex B to Appendix 1 to Deadline 6A Submission: Applicant's response to ExA's further requests for information under EPR Rule 17 – 4.1.5

REP6A-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Appendix 2 to Deadline 6A Submission: Schedule of Mitigation
REP6A-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Annex A to Appendix 2 to Deadline 6A Submission: Schedule of Mitigation (tracked changes)
REP6A-007	<a href="#">Maritime and Coastguard Agency</a> Deadline 6A Submission - Responses to the ExA's Further requests for information under EPR Rule 17
REP6A-008	<a href="#">Marine Management Organisation</a> Deadline 6A Submission - Responses to the ExA's Further requests for information under EPR Rule 17
REP6A-009	<a href="#">Natural England</a> Deadline 6A Submission - Responses to the ExA's Further requests for information under EPR Rule 17
REP6A-010	<a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority and Estuary Services Limited</a> Deadline 6A Submission - Responses to the Examining Authority's Further requests for information under EPR Rule 17
REP6A-011	<a href="#">Pinsent Masons LLP on behalf of Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 6A Submission - Responses to the ExA's Further requests for information under EPR Rule 17
REP6A-012	<a href="#">The Crown Estate</a> Deadline 6A Submission - Responses to the ExA's Further requests for information under EPR Rule 17
REP6A-013	<a href="#">Trinity House</a> Deadline 6A Submission - Responses to the ExA's Further requests for information under EPR Rule 17
REP6A-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Late Deadline 6A Cover Letter. Late Submission accepted at the discretion of the Examining Authority
REP6A-015	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Appendix 4 to Deadline 6A Submission: Applicant's Responses to Qs 35 to 41 of the Examining Authority's commentary on the draft DCO. This document should be read in conjunction with REP6-034. Late Submission accepted at the discretion of the Examining Authority
REP6A-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 6A Submission - Appendix 3 to Deadline 6A Submission: Cefas 2009 strategic study - Rationale for the removal of the Thanet Offshore Wind Farm seasonal restriction. Late Submission accepted at the discretion of the Examining Authority
REP6A-017	<a href="#">National Grid</a> Deadline 6A Submission - Responses to the ExA's Further requests for information under EPR Rule 17. Withdrawal of representation. Late Submission accepted at the discretion of the Examining Authority

## Deadline 7 – 6 June 2019

- Comments on responses to the ExA's Further Written Questions (ExQ3)
- Comments on responses to the ExA's Further requests for information under EPR Rule 17 (if required)
- Responses to comments on the ExA's draft DCO or dDCO commentary (if required)
- Responses to comments on the RIES (if published)
- Responses to any further information requested by the ExA
- Comments on any additional information/ submissions received by Deadline 6
- Statements of matters not agreed (in circumstances where a SoCG could not be finalised by Deadline 6)
- Final DCO to be submitted by the Applicant in the SI template with the SI template validation report
- Applicant's Tracking List of SoCGs and agreements identifying any changes since Deadline 3
- Applicant's Tracking List of Application Documents and Plans identifying any changes since Deadline 3
- Applicant's Tracking List of changes to mitigation measures, identifying any changes since Deadline 3
- Submission to the ExA of comments on the SEZ Material Change Consultation Report and any supporting documents
- Submission to the ExA of comments on statements of submission made at D6 by IPs or OPs who joined the Examination at that deadline
- Submission to the ExA of responses to comments on D5 submissions on the Material Change application by IPs and OPs already within the Examination before D6

REP7-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Cover Letter
REP7-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 1 to Deadline 7 Submission: Guide to the Application
REP7-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 2 to Deadline 7 Submission: Applicant's Response to Deadline 6 Interested Parties Submissions - Shipping and Navigation
REP7-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex A to Appendix 2 to Deadline 7 Submission: Collation of responses to Interested Parties on submissions relating to the navigational simulation
REP7-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex B to Appendix 2 to Deadline 7 Submission: Email Correspondence
REP7-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 3 to Deadline 7 Submission: Responses to IP Comments on the ExA's DCO Commentary
REP7-007	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 7 Submission - Appendix 4 to Deadline 7 Submission: Applicant's Response to Deadline 6 Interested Parties Submissions – Other Matters
REP7-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 5 to Deadline 7 Submission: Revised Draft Development Consent Order - Revision H
REP7-009	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex A to Appendix 5 to Deadline 7 Submission: SI Template Validation Report
REP7-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 6 to Deadline 7 Submission: Explanatory Memorandum
REP7-011	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex A to Appendix 6 to Deadline 7 Submission: Log of Changes to the draft Development Consent Order
REP7-012	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex B to Appendix 6 to Deadline 7 Submission: Explanatory Memorandum – Tracked Changes
REP7-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex C to Appendix 6 to Deadline 7 Submission: Revised Draft Development Consent Order Tracked Changes
REP7-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex D to Appendix 6 of Deadline 7 Submission – Offshore Project Description Assessed in the Environmental Statement
REP7-015	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex E to Appendix 6 to Deadline 7 Submission: Applicant's response to ExA's further requests for information under EPR Rule 17 – 4.1.5
REP7-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 7 to Deadline 7 Submission: Requests for Statements of Common Ground and Statement of Commonality
REP7-017	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 8 to Deadline 7 Submission: Schedule of Mitigation
REP7-018	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Annex A to Appendix 8 to Deadline 7 Submission: Schedule of Mitigation (Tracked changes since Deadline 3)
REP7-019	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 9 to Deadline 7 Submission: Planning Act 2008 s.135 Crown Land and Consent
REP7-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 10 to Deadline 7 Submission: List of All Objections to the Grant of Compulsory Acquisition and Temporary Possession Powers (ExQ 1.3.6)
REP7-021	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 7 Submission - Appendix 11 to Deadline 7 Submission Landowner Agreements Update Table
REP7-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 12 to Deadline 7 Submission: Commercial Agreements Update Table
REP7-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 13 to Deadline 7 Submission: ExQ 1.3.7 Statutory Undertakers Land Rights table
REP7-024	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 14 to Deadline 7 Submission: ExQ 1.3.8 Statutory Undertakers Apparatus table
REP7-025	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 15 to Deadline 7 Submission: Outline Shipping and Navigation Liaison Plan
REP7-026	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 16 to Deadline 7 Submission: Applicant's position on Shipping and Navigation Future Baseline
REP7-027	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 17 to Deadline 7 Submission: Statement of Reasons - Revision B
REP7-028	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 18 to Deadline 7 Submission: Statement of Common Ground – Port of London Authority
REP7-029	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 19 to Deadline 7 Submission: Statement of Common Ground – Estuary Services Limited
REP7-030	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 20 to Deadline 7 Submission: Statement of Common Ground - Thanet Fishermen's Association
REP7-031	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 21 to Deadline 7 Submission: Requests for Statements of Common Ground and Statement of Commonality – Shipping and Navigation
REP7-032	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 24 to Deadline 7 Submission: Statement of Common Ground – Chamber of Shipping-
REP7-033	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 27 to Deadline 7 Submission: Shipping and Navigation: Schedule of Mitigation
REP7-034	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 28 to Deadline 7 Submission: Applicant's commentary on responses to the ExA's further requests for information under EPR Rule 17
REP7-035	<a href="#">Marine Management Organisation</a>

	Deadline 7 Submission - Comments on responses to the Examining Authority's Further Written Questions (ExQ3), Responses to the ExA's Further requests for information under EPR Rule 17 and Comments on the Applicant's Draft Development Consent Order (dDCO) Revision F
REP7-036	<a href="#">Maritime and Coastguard Agency</a> Deadline 7 Submission - Cover letter, Responses to the ExA's Further requests for information under EPR Rule 17 and Response to comments on the ExA's dDCO Commentary
REP7-037	<a href="#">Natural England</a> Deadline 7 Submission - Cover letter and comments on documents submitted by the applicant at Deadline 6 and in the period leading up to Deadline 7
REP7-038	<a href="#">Natural England</a> Deadline 7 Submission - Deadline 7 Submission - Comments on responses to the Examining Authority's Further Written Questions (ExQ3)
REP7-039	<a href="#">Natural England</a> Deadline 7 Submission - Response to the Applicant's comments on RIES
REP7-040	<a href="#">Natural England</a> Deadline 7 Submission - Response to comments on the Examining Authority's dDCO Commentary
REP7-041	<a href="#">Natural England</a> Deadline 7 Submission - Comments on Responses to the ExA's Further requests for information under EPR Rule 17
REP7-042	<a href="#">Port of Tilbury London Limited and London Gateway Port Limited</a> Deadline 7 Submission - Response to the Applicant's Deadline 6 submissions, Comments on Responses to the ExA's Further requests for information under EPR Rule 17, Comments on responses to the Examining Authority's DCO commentary and final overall submissions and closing remarks
REP7-043	<a href="#">Port of London Authority and Estuary Services Limited</a> Deadline 7 Submission - Response to the Applicant's Deadline 6 submissions, Comments on responses to the Examining Authority's Further Written Questions (ExQ3), Response to Deadline 5 Submission by Interested Parties, Response to ISH8 Hearing Action Point 20 requested for Deadline 7, Response to comments on the Examining Authority's dDCO Commentary
REP7-044	<a href="#">Estuary Services Limited</a> Deadline 7 Submission - Draft Statement of Common Ground
REP7-045	<a href="#">Port of London Authority</a> Deadline 7 Submission - Draft Statement of Common Ground
REP7-046	<a href="#">Trinity House</a> Deadline 7 Submission - Deadline 7 Submission - Cover letter and Comments on the Applicant's Draft Development Consent Order (dDCO) Revision F
REP7-047	<a href="#">Trinity House</a> Deadline 7 Submission - Deadline 7 Submission - Counsel's Opinion (Rebecca Clutten FTB) on the Applicant's Draft

	Development Consent Order (dDCO) Revision F (arbitration and saving provision for THLS)
REP7-048	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 18 to Deadline 7 Submission: Statement of Common Ground – Port of London Authority (Signed). Late Submission accepted at the discretion of the Examining Authority
REP7-049	<a href="#">Vattenfall Wind Power Limited</a> Deadline 7 Submission - Appendix 19 to Deadline 7 Submission: Statement of Common Ground – Estuary Services Limited (Signed). Late Submission accepted at the discretion of the Examining Authority
<b>Deadline 8 – 10 June 2019</b>	
<ul style="list-style-type: none"> <li>• Submission to the ExA by the Applicant of responses to comments on statements of submission made at D6 by new IPs or OPs who joined the Examination at that deadline</li> <li>• Submission to the ExA by the Applicant of responses to comments on the SEZ Material Change consultation report and any supporting documents</li> </ul>	
REP8-001	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Cover letter. Late Submission accepted at the discretion of the Examining Authority
REP8-002	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 1 to Deadline 8 Submission: Guide to the Application
REP8-003	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 2 to Deadline 8: Applicant's final position on matters outstanding
REP8-004	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex A to Appendix 2 to Deadline 8 Submission: Final position on the Environmental Statement topics and other matters
REP8-005	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex B to Appendix 2 to Deadline 8 Submission: Final Position Statement: draft Development Consent Order
REP8-006	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 4 to Deadline 8 Submission: Applicant's Response to Natural England's Deadline 7 Submissions
REP8-007	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 5 to Deadline 8 Submission: Applicant's Response to Interested Parties Deadline 7 Submissions – Shipping and Navigation
REP8-008	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex A to Appendix 5 to Deadline 8 Submission: Busiest day animation - pilotage
REP8-009	<a href="#">Vattenfall Wind Power Limited</a>

	Deadline 8 Submission - Annex B to Appendix 5 to Deadline 7 Submission: Response on policy matters in relation to shipping and navigation
REP8-010	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex C to Appendix 5 to Deadline 8 Submission: Accompanying Figure
REP8-011	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 6 to Deadline 8 Submission: Legal Response to IP Representations
REP8-012	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 7 to Deadline 8 Submission: Response to Deadline 7 submissions on Fish Ecology
REP8-013	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 7 to Deadline 8 Submission: Revised Draft Development Consent Order
REP8-014	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex A to Appendix 7 to Deadline 8 Submission: SI Template Validation Report
REP8-015	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 8 to Deadline 8 Submission: Explanatory Memorandum
REP8-016	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex A to Appendix 8 to Deadline 8 Submission: Log of Changes to the draft Development Consent Order
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REP8-018	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex C to Appendix 8 to Deadline 8 Submission: Revised Draft Development Consent Order - Tracked Changes
REP8-019	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex D to Appendix 8 of Deadline 8 Submission – Offshore Project Description Assessed in the Environmental Statement
REP8-020	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex E to Appendix 8 to Deadline 8 Submission: Plan of Plans. Late Submission accepted at the discretion of the Examining Authority
REP8-021	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Annex F to Appendix 8 to Deadline 8 Submission: Applicant’s response to ExA’s further requests for information under EPR Rule 17 – 4.1.5
REP8-022	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 9 to Deadline 8 Submission: MCZ Assessment Audit
REP8-023	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 10 to Deadline 8 Submission: Offshore Works Plan
REP8-024	<a href="#">Vattenfall Wind Power Limited</a>



	Deadline 8 Submission - Appendix 11 to Deadline 8 Submission: Statement of Common Ground - RiverOak Strategic Partners Limited (RSP)
REP8-025	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission - Appendix 12 to Deadline 8 Submission: Applicant's Final position on Arbitration
REP8-026	<a href="#">Vattenfall Wind Power Limited</a> Deadline 8 Submission: Annex A to Appendix 12 to Deadline 8 Submission: Norfolk Vanguard MMO Position Paper on Arbitration
<b>Other Documents</b>	
OD-001	<a href="#">Regulation 32 Transboundary Screening</a>
OD-002	<a href="#">Reg 24 notification response from France Point Focal Convention de Espoo</a>
OD-003	<a href="#">Reg notification response from Denmark</a>
OD-004	<a href="#">Reg 24 notification response from the Netherlands</a>
OD-005	<a href="#">Reg 24 notification response from Belgium</a>
OD-006	<a href="#">London Gazette Notice</a>
OD-007	<a href="#">Section 56 Notice</a>
OD-008	<a href="#">Sea Zones Plan</a> Sea Zones Plan for use in Issue Specific Hearing 2
OD-009	<a href="#">Regulation 32 Response from France (17 October 2018)</a>
OD-010	<a href="#">Regulation 32 Response from Denmark (21 August 2018)</a>
OD-011	<a href="#">Regulation 32 Response from Netherlands (24 September)</a>

## **APPENDIX C: LIST OF ABBREVIATIONS**

## Appendix C1: Bodies and Persons

<b>Body/person</b>	<b>Acronym, Abbreviation or Term</b>
BritNed Development Ltd	BritNed
Centre for Environment, Fisheries and Aquaculture Science	Cefas
Dover District Council	DDC
Environment Agency	EA
Estuary Services Limited	ESL
Examining Authority	ExA
French Government Ministries, Directions, Agencies etc	Government of France
Highways England	HE
Historic England	HistE
Health and Safety Executive	HSE
International Maritime Organisation	IMO
Infrastructure Planning Commission	IPC
Interested Party	IP
Joint Nature Conservation Committee	JNCC
Kent and Essex Inshore Fisheries Conservation Authority	KEIFCA
Kent County Council	KCC
Kent Wildlife Trust	KWT
London Southend Airport	LSA
London Gateway Port Ltd	LGPL
London Pilot Council	LPC
Marine Management Organisation	MMO
Maritime and Coastguard Agency	MCA
Ministry of Defence	MoD
Ministry of Justice	MoJ
National Federation of Fishermen's Organisations	NFFO
National Grid	NG
National Grid Electricity Transmission	NGET
National Grid Gas	NGG
National Trust	NT
Natural England	NE
Nemo Link Ltd	NLL
Office of Gas and Electricity Markets	OfGEM
Other Person	OP
Port of London Authority	PLA
Port of Tilbury London Ltd	PoTLL
Public Health England	PHE
Ramac Holdings (Trading) Ltd	Ramac
RiverOak Strategic partners (Manston Airport)	RSP

<b>Body/person</b>	<b>Acronym, Abbreviation or Term</b>
Royal Society for the Protection of Birds	RSPB
Royal Yachting Association	RYA
Secretary of State	SoS
South Eastern Power Networks (subsidiary of UKPN)	SPN
Southern Water	SW
Statutory Nature Conservation Body	SNCB
Thanet District Council	TDC
The Crown Estate	tCE
Thanet Fishermens' Association and related IPs	TFA
Trinity House	TH
UK Chamber of Shipping	UKCoS
UK Power Networks	UKPN
United Kingdom Maritime Pilot's Association	UKMPA
Vattenfall Wind Power Ltd	VWPL

## Appendix C2: Technical, Legal, Policy and Process Terms

Reference	Abbreviation or usage
Air Defence Radar	ADR
Air Quality Directive	AQD
Adverse Effect on Integrity	AEoI
As Low As Reasonably Practicable	ALARP
Accompanied Site Inspection (by the ExA)	ASI (numbered 1 and 2)
Biogenic Reef Mitigation Plan	BRMP
Book of Reference	BoR
Cable Exclusion Area	CEA
Cable Exclusion Zone	CEZ
candidate Special Area of Conservation	cSAC
Code of Construction Practice	CoCP
Compulsory Acquisition	CA
Compulsory Acquisition Hearing (by the ExA)	CAH (numbered 1 and 2)
Construction Environmental Management Plan	CEMP
International Regulations for Preventing Collisions at Sea	COLREGS
Construction Method Statement	CMS
Construction Noise and Vibration Management Plan	CNVMP
Countryside and Rights of Way Act 2000	CRoW
Development Consent Order	DCO
draft Development Consent Order	dDCO
Deemed Marine Licence	DML
Environmental Permit	EP
Infrastructure Planning (Examination Procedure) Rules 2010	EPR
Emergency Response Co-operation Plan	ERCoP
Environmental Impact Assessment	EIA
Environmental Statement	ES
European Protected Species	EPS
Examining Authority (written) Questions	ExQ (numbered 1 to 3)
Fisheries Liaison and Co-Existence Plan	FLCP
Formal Safety Assessment	FSA
General Provisions on Ships Routeing (IMO)	GPSR
Habitats Regulations Assessment	HRA
hectares	ha
Horizontal Directional Drilling	HDD
Initial Assessment of Principal Issues	IAPI
Imperative Reasons of Overriding Public Interest	IROPI
Issue Specific Hearing (by the ExA)	ISH (numbered 1 to 9)
Kilometre	km
Knots	kn
Landscape and Ecological Management Plan	LEMP

<b>Reference</b>	<b>Abbreviation or usage</b>
Local Impact Report	LIR
Local Nature Reserve	LNR
Landscape and Visual Impact Report	LVIA
Likely Significant Effect	LSE
Marine and Coastal Access Act 2009 (as amended)	MACAA2009
Marine Conservation Zone	MCZ
Marine Mammal Mitigation Protocol	MMMP
Marine Guidance Note	MGN
(UK) Marine Policy Statement	MPS
Marine Strategy Framework Directive	MSFD
Marine Spatial Planning (UNESCO guidance)	MSP
Mean High Water Springs	MHWS
Mean Low Water	MLW
Megawatts	MW
Megawatts (electric)	MWe
The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009	MPO
National Nature Reserve	NNR
National Planning Policy Framework	NPPF
National Policy Statement	NPS
National Policy Statement for Overarching Energy	NPS EN-1
National Policy Statement for Renewable Energy	NPS EN-3
National Policy Statement for Electricity Networks	NPS EN-5
National Policy Statement for Ports	NPSP
Nautical mile	nm
Navigation Risk Assessment	NRA
Navigation Risk Assessment Addendum	NRAA
Neighbourhood Planning Act 2017	NPA2017
Offshore Renewable Energy Installation	OREI
Offshore Renewables Protocol for Archaeology	ORPAD
Offshore Wind Farm	OWF
Open Floor Hearing (by the ExA)	OFH
Outline Access Management Strategy	OAMS
Outline Landscape and Ecological Management Plan	OLEMP
Outline Site Integrity Plan	OSIP
Preliminary Environmental Information Report	PEIR
Planning Act 2008	PA2008
Planning Policy Guidance Notes (now cancelled)	PPGs
Planning Policy Statements (now cancelled)	PPSs
Planning Practice Guidance (under the NPPF)	PPG
Practice and Exercise Area	PEXA

<b>Reference</b>	<b>Abbreviation or usage</b>
Project Environment Management Plan	PEMP
proposed Marine Conservation Zone	pMCZ
Public Open Space	POS
Public Right of Way	ProW
Public Sector Equality Duty	PSED
recommended Marine Conservation Zone	rMCZ
Relevant Representation	RR
Report on the Implications for European Sites	RIES
Report to Inform Appropriate Assessment	RIAA
Rule 17 Questions (by the ExA under Rule 17 EPR)	R17Q
(International Convention for the) Safety of Life at Sea	SOLAS
Special Area of Conservation	SAC
Search and Rescue	SAR
Site of Community Importance	SCI
Structures Exclusion Zone	SEZ
So Far As Is Reasonably Practicable	SFAIRP
Site Integrity Plan	SIP
Seascape, Landscape and Visual Impact Report	SLVIA
Saltmarsh Mitigation, Reinstatement and Monitoring Plan	SMRMP
Shipping and Navigation Liaison Plan	SNLP
Statement of Common Ground	SoCG
Statement of Reasons	SoR
Special Protection Area	SPA
Special Parliamentary Procedure	SPP
square metres	sq m
Site of Special Scientific Importance	SSSI
Site selection and alternatives	SSA
Suspended Sediment Concentration	SSC
Thanet Offshore Wind Farm (the existing development)	TOWF
Thanet Extension Offshore Wind Farm (the Proposed Development)	TEOWF
Town and Country Planning Act 1990 (as amended)	TCPA1990
Transition Joint Bay	TJB
Temporary Possession	TP
United Nations Convention on the Law of the Sea	UNCLOS
United Nations Environment Programme	UNEP
Un-exploded Ordnance	UXO
Unaccompanied Site Inspection (by the ExA)	USI (numbered 1 to 5)
Water Framework Directive	WFD
Written Representation	WR

<b>Reference</b>	<b>Abbreviation or usage</b>
Written Scheme of Investigation	WSI
Wind Turbine Generator	WTG
Zone of Theoretical Visibility	ZTV



## **APPENDIX D: THE DCO**

For reasons set out in the body of this Report, the appended DCO is not a recommended DCO. It represents what in the ExA's consideration is the best achievable DCO, should the SoS be minded to make the Order. Nevertheless, for reasons set out in this Report, the ExA does not consider the appended DCO to comply with relevant NPS policy or that there are any lawful means of enabling it to do so.

**2019 No.**

**INFRASTRUCTURE PLANNING**

**The Thanet Extension Offshore Wind Farm Order 2019**

*Made* - - - - *[]*  
*Laid before Parliament* *[]*  
*Coming into force* - - *[]*

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(a)</sup> for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)<sup>(b)</sup>;

And whereas the application was examined by a Panel appointed as an examining authority by the Secretary of State pursuant to Chapter 4 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(c)</sup>;

The examining authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act made a report and recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the Panel, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

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(a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522)

(b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20)

(c) S.I. 2010/103, amended by S.I. 2012/635

The Secretary of State, having considered the report and recommendation of the Panel, is satisfied that open space comprised within the Order land, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public and that, accordingly, section 132(3) of the 2008 Act applies or, where open space comprised within the Order Land is being acquired for a temporary purpose that, accordingly, section 132(4B) of the 2008 Act applies;

The Secretary of State in exercise of the powers conferred by sections 114, 115, 120, and 149A of the 2008 Act makes the following Order—

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Thanet Extension Offshore Wind Farm Order and comes into force on [●] 201[●].

#### Interpretation

2. In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1989 Act” means the Electricity Act 1989(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2003 Act” means the Communications Act 2003(h);

“the 2004 Act” means the Energy Act 2004(i);

“the 2008 Act” means the Planning Act 2008(j);

“the 2009 Act” means the Marine and Coastal Access Act 2009(k);

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(l);

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of this Order;

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(a) 1961 c.33

(b) 1965 c.56

(c) 1980 c.66

(d) 1981 c.66

(e) 1989 c.29

(f) 1990 c.8

(g) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18)

(h) 2003 (c.21)

(i) 2004 c.20. Section 105 was amended by section 69 of the Energy Act 2008 (c.32)

(j) 2008 c.29. The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27). Section 149A was inserted by paragraph 4 in Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c.23)

(k) 2009 c.23

(l) S.I. 2016/1154

“ancillary works” means the ancillary works described in Part 2 of **Schedule 1** (ancillary works) and any other works authorised by this Order and which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of **Schedule 1** (authorised development) and any other development to the extent that this has been assessed in the Environmental Statement, authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works authorised by this Order;

“biogenic reef mitigation plan” means the document certified as the biogenic reef mitigation plan by the Secretary of State for the purposes of this Order;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR buoys, wave buoys and guard buoys;

“cable” in respect of any onshore cable includes direct lay cables or cables pulled through cable ducts and in respect of any cable whether onshore or offshore means any Alternating Current (AC) cables and includes fibre optic cables either within the cable or laid alongside, and “cable” means any part of the onshore or offshore elements of the Order limits;

“cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing infrastructure by the inter-array, interconnecting or export cables authorised by this Order together with physical protection measures including concrete mattresses, rock placement or other protection methods;

“cable ducts” means conduits for the installation of cables;

“carriageway” has the same meaning as in the 1980 Act;

“code of construction practice” means the document certified as the code of construction practice by the Secretary of State for the purposes of this Order;

“commence” means: (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for archaeological investigations, pre-construction surveys and monitoring, and seabed preparation and clearance (b) in respect of any other works comprised in the authorised project, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, environmental surveys, investigations for the purpose of assessing ground conditions, diversion and laying of services, temporary structures or hard standing, the temporary display of site notices or advertisements and the words “commencement” and “commenced” will be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“connection works” means Work Nos. 3A to 16 and any related further associated development in connection with those works;

“construction compound” means a construction site associated with the connection works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“deemed generation assets marine licence” means the licence set out in **Schedule 10** (deemed licence under the 2009 Act – generation assets) and deemed by **article 30** (deemed marine

licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed export cable system marine licence” means the licence set out in **Schedule 11** (deemed licence under the 2009 Act export cable system) and deemed by **article 30** (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed marine licences” means the deemed generation assets marine licence and deemed export cable system marine licence;

“design and access statement” means the document certified as the design and access statement by the Secretary of State for the purposes of this Order;

“discharging authority” means the authority whose approval is required in respect of any details submitted to that authority pursuant to any article or requirement in this Order and the MMO in respect of any conditions contained in **Schedule 10** and **11** of this Order;

“draught height” means the distance between the lowest point of the rotating blade of the wind turbine generator and MHWS;

“environmental statement” means the documents listed in Part 1 of **Schedule 12** certified as the environmental statement by the Secretary of State for the purposes of this Order;

“export” means the flow of electricity from a wind turbine generator or offshore substation into a distribution network or transmission system for Great Britain, and “export” also includes the conveying of, or importing of, electricity between the distribution network or transmission system for Great Britain and a wind turbine generator or offshore substation;

“HAT” means highest astronomical tide;

“highway” and “highway authority” have the same meaning as in the 1980 Act<sup>(a)</sup>;

“jacket foundation” means a steel jacket lattice-type structure constructed of steel which is fixed to the seabed at two or more points with pin piles or suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“joint pit” means an excavation, structure, or working area, below ground (or below and above ground within Works No. 4, 7 and 13) formed to enable the jointing of high voltage power cables and fibre optic cables;

“jointing works” means a process by which two or more cables or fibre optic cables are connected to each other by means of cable joints within a joint bay or a transition joint bay;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“LAT” means lowest astronomical tide;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any cable or any component part of any wind turbine generator, offshore substation, onshore substation or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the average height of all low waters above Chart Datum;

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(a) “Highway” is defined in section 328(1) for “highway authority”, see section 1

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, typically cylindrical, driven or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore archaeological draft written scheme of investigation” means the document certified as the offshore archaeological draft written scheme of investigation by the Secretary of State for the purposes of this Order;

“offshore substation” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform and, depending on the type of substation, low, medium or high voltage switch gear, and AC filters and AC converter with switching devices;

“offshore platform” means any offshore substation;

“offshore works” means Work Nos. 1 to 3B and any ancillary works in connection with those works;

“offshore works plan” means the plan certified as the works plan (offshore) by the Secretary of State for the purposes of the Order;

“onshore cable corridor” means the onshore area in which the cables and fibre optic cables will be located within the Order limits;

“onshore substation” means a compound containing electrical equipment including (but not limited to) power transformers, switchgear, electrical protection equipment devices (disconnectors, circuit breakers), reactive compensation equipment, harmonic filters, cables, lightning protection masts, control buildings, welfare facilities, communications masts, back-up generators, access, fencing, other associated equipment, structures or buildings and, depending on the type of substation, equipment including high voltage switchgears;

“onshore works plan” means the plan certified as the works plan (onshore) by the Secretary of State for the purposes of the Order;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

“Order limits” means the limits shown on the works plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of **Schedule 1** (authorised development) of this Order;

“outline landscape and ecological management plan” means the document certified as the outline landscape and ecological management plan by the Secretary of State for the purposes of this Order;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

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(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.



“permanent structure” means a wind turbine generator, meteorological mast or offshore substation forming part of the authorised project and includes, in each case, its foundations;

“pin piles” means steel cylindrical piles driven or drilled into the seabed to secure jacket foundations;

“pre-commencement works” means archaeological investigations, remedial work in respect of any contamination or other adverse ground conditions, the erection of any temporary fencing or temporary means of enclosure, site clearance and preparation, demolition work and diversion and laying of services, temporary structures or hard standing.;

“relevant planning authority” means the district planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Part 3 of **Schedule 1** (requirements) to this Order;

“Saltmarsh Mitigation, Reinstatement and Monitoring Plan” means the document certified as the Saltmarsh Mitigation, Reinstatement and Monitoring Plan by the Secretary of State for the purposes of this Order;

“Shipping and Navigation Liaison Plan” means the document certified as the Shipping and Navigation Liaison Plan by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act(a);

“structures exclusion zone” means the area hatched green on the offshore works plan;

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for fixity of the structure it supports;

“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order;

“temporary works area” means a work site associated with the connection works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, bunded storage areas, areas for welfare facilities including washroom facilities, and temporary fencing or other means of enclosure;

“transition joint bay” means an excavation, structure, or working area above or below ground where the offshore export cables and fibre optic cables comprised in Work No. 4A are jointed to the connection works;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means Vattenfall Wind Power Ltd;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include

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(a) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c.7)

J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation; and

(1) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over the land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

(2) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to in **requirements 2 to 6** in Part 3 of **Schedule 1** (requirements) and **conditions 1 to 4** in Part 4 of the deemed marine licences.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) Unless otherwise stated, references in this Order to points identified by letters are to be construed as references to the points so lettered on the works plan.

(5) The expression “includes” may be construed without limitation.

## PART 2

### Principal Powers

#### **Development consent etc. granted by the Order**

**3.**—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 3B must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 4 to 16 must be constructed anywhere within the Order limits landward of MLWS.

#### **Power to construct and maintain authorised project**

**4.**—(1) The undertaker may at any time construct, operate, use and maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to operate, use and maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

#### **Benefit of the Order**

**5.**—(1) Subject to paragraphs (2) and (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be agreed between the undertaker and the transferee, subject to the paragraphs (4) to (6) below;
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed

marine licences referred to in paragraph (2) below) and such related statutory rights as may be so agreed.

(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of the deemed generation assets marine licence or the deemed export cable system marine licence, or both, and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of the deemed generation assets marine licence, or the whole of the deemed export cable system marine licence and such related statutory rights as may be so agreed.

(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State must provide a response as soon as reasonably practicable.

(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.

(5) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person the whole of the benefit of the provisions of the deemed marine licences.

(6) The Secretary of State must consult National Grid before giving consent to the transfer or grant to a person of any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) above).

(7) The Secretary of State must determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker as soon as reasonably practicable.

(11) Where paragraph (15) applies no consent of the Secretary of State is required under paragraph (1) or paragraph (2).

(12) Where an agreement has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraphs (13), (14) or (18), include references to the transferee or lessee.

(13) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(14) Where an agreement has been made in accordance with paragraph (1) or (2)—

- (a) the benefit (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.

(15) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a transmission licence under the Electricity Act 1989; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claim has been made and has been compromised or withdrawn;

- (iii) compensation has been paid in final settlement of any such claim;
- (iv) payment of compensation into court has taken place in lieu of settlement of any such claim;
- (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable; or
- (vi) the transferee or lessee is a person within the same group as Vattenfall AB (publ) (a company incorporated in Sweden with Reg. No. 556036-2138, whose registered office is SE-169 92 Stockholm Sweden) under Section 1261 of the Companies Act 2006(a).

(16) In respect of any transfer or grant of a leasehold interest to a company within the same group as Vattenfall AB (publ) in accordance with paragraph (15)(b)(vi), the undertaker must obtain National Grid's approval in writing before any such transfer or grant occurs (such approval not to be unreasonably withheld or delayed), and such approval must be given provided that prior to the transfer or grant, the transferee or lessee provides a direct covenant to National Grid to comply with any contractual obligations of the undertaker given to National Grid in respect of that part of the authorised project to be transferred or subject to the grant of a lease.

(17) The provisions of **article 8** (street works), **article 10** (temporary stopping up of streets), **article 17** (compulsory acquisition of land), **article 19** (compulsory acquisition of rights), **article 25** (temporary use of land for carrying out the authorised project) and **article 26** (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Works Nos. 3A to 16 a person who holds a licence under the Electricity Act 1989; or
- (b) in respect of functions under **article 8** (street works) relating to a street, a street authority.

(18) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to work or utilisation of powers in the vicinity or the exercise of powers in their area, to the MMO and the relevant planning authority, and if such transfer or grant relates to works or utilisation of powers within 15 metres measured in any direction of apparatus of National Grid, to National Grid.

(19) The notices required under paragraphs (3) and (13) must—

- (a) state—
  - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
  - (ii) subject to paragraph (13), the date on which the transfer will take effect;
  - (iii) the provisions to be transferred or granted; and
  - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (13), will apply to the person exercising the powers transferred or granted; and
  - (v) except where paragraph (13) or (13) applies confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
  - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
  - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

The date specified under paragraph (13)(a)(ii) must not be earlier than the expiry of five days from the date of the receipt of the notice.

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(a) 2006 c.46.

(20) The notice given under paragraph (18) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

### **Application and modification of legislative provisions**

6.—(1) Regulation 6 of the Hedgerows Regulations 1997<sup>(a)</sup> is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) or for carrying out or the maintenance of development which has been authorised by an order granting development consent pursuant to the Planning Act 2008”.

(2) Section 72(7) of the 2009 Act is modified so as to read for the purposes of this Order only as follows—

“(7) On an application made by a licensee, the licensing authority which granted the licence—

- (a) may transfer the licence from the licensee to another person, and
- (b) if it does so, must vary the licence accordingly.”

(3) The provisions of the Neighbourhood Planning Act 2017<sup>(b)</sup> insofar as they relate to temporary possession of land under **article 25** (temporary use of land for carrying out the authorised project) and **article 26** (temporary use of land for maintaining the authorised project) of this Order do not apply to this Order in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project.

### **Defence to proceedings in respect of statutory nuisance**

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(c)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(d)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with **requirement 2** (control of noise during operational phase); or
  - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision

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(a) SI 1997/1160

(b) SI 1997/1160

(c) 1990 c.43. There are amendments to this Act which are not relevant to the Order.

(d) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

## PART 3

### Streets

#### Street Works

**8.**—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in **Schedule 2** (streets subject to street works) as is within the Order limits and may—

- (a) break up or open up the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;
- (d) maintain apparatus under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent will not be unreasonably withheld, the undertaker may, for the purposes of the authorised project, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the authorised development and article 39 (miscellaneous provisions relating to the 1990 Act) will apply.

(4) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(5) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

#### Temporary stopping up of public rights of way

**9.** The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in columns (2) of **Schedule 3** (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the public rights of way to be temporarily stopped up plan.

#### Temporary stopping up of streets

**10.**—(1) Subject to paragraph (4), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent will not be unreasonably withheld, the undertaker may, for the purposes of the authorised project, enter on so much of any other street whether or

not within the Order limits, for the purposes of carrying out the authorised development and **article 36 (arbitration)** will apply.

(4) The undertaker must not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) that street authority is deemed to have granted consent.

### **Access to works**

**11.**—(1) The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of **Schedule 4** (access to works); and
- (b) with the approval of the highway authority in accordance with **requirement 17** (highway accesses), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) If the highway authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that highway authority is deemed to have granted approval.

### **Agreements with street authorities**

**12.**—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in **article 8(1)** (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Application of the 1991 Act**

**13.**—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under **article 8** (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under **article 10** (temporary stopping up of streets),

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);

- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

## PART 4

### Supplemental Powers

#### **Discharge of water and works to watercourses**

**14.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to sub-paragraphs (3) and (4) below.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to **article 14(1)** except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works in, under, over or within 8 metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Subject to sub-paragraph (8) below and **Requirement 9**, the undertaker may in connection with the carrying out or maintenance of the authorised project, alter the bed or banks of, and construct works in, under, over or within any watercourse and may divert, alter, interrupt or obstruct the flow of any watercourse within the Order limits.

(8) The undertaker must not—

- (a) undertake any works within 8 metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the consent of the

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(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and Section 35(8)(a) of the Competition and Services (Utilities) Act 1992 (c.43) and amended by sections 32 and 42 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.



Environment Agency, which must not be unreasonably withheld but may be subject to reasonable conditions; and

- (b) undertake any works to any ordinary watercourse without the consent of the relevant Internal Drainage Board or Kent County Council as the case may be, which must not be unreasonably withheld but may be subject to reasonable conditions.

(9) In this article—

“public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(10) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or paragraph (8) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

### **Authority to survey and investigate the land onshore**

**15.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project or which may be required as set out in the assessment in the Environmental Statement for the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article in land held by or in right of the Crown without the consent of the Crown.

(5) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (5)(a) in the case of a highway authority; or
- (b) under paragraph (5)(b) in the case of a street authority;

that authority is deemed to have granted consent.

(8) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Public rights of navigation**

**16.**—(1) Subject to paragraphs (2), (4) and (5), the rights of navigation over the places in the sea where any of the permanent structures are located within territorial waters will be suspended.

(2) The undertaker will submit a plan showing the precise locations of each permanent structure to Trinity House, the MCA, the MMO, the Port of London Authority and the Secretary of State—

- (a) in the case of Trinity House, no later than ten weeks prior to the commencement of the works;
- (b) in all other cases, no later than eight weeks prior to the commencement of the works.

(3) The plan submitted in accordance with paragraph (2) will be published by the undertaker as required by the Secretary of State.

(4) The undertaker will exhibit such lights, marks, sounds and signals and other aids to navigation and take such reasonable steps for prevention of danger to navigation caused by the construction of the permanent structures as Trinity House directs.

(5) Subject to the undertaker complying with paragraph (4), 14 days prior to the commencement of the works, the public right of navigation over the places of the sea where the plan indicates each permanent structure is to be located will be suspended.

(6) In respect of the location of permanent structures, paragraph (1) will cease to have effect as soon as that permanent structure has been decommissioned and permanently removed, and the relevant rights of navigation will resume.

## **PART 5**

### **Powers of Acquisition**

#### **Compulsory acquisition of land**

**17.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental, to it.

(2) This article is subject to paragraph (2) of **article 19** (compulsory acquisition of rights) and **article 25** (temporary use of land for carrying out the authorised project).

(3) The undertaker must not exercise any powers of compulsory acquisition authorised by this Order until it has acquired a legal estate in the seabed in the form of an Agreement for Lease from the Crown Estate which includes the offshore wind turbine generating station comprised in Work No. 1 and provided the Secretary of State with written evidence of such interest.

(4) Upon exercising compulsory acquisition powers in respect of parcels 02/65, 02/70, 02/75 and 02/85 as shown on the land plans and having completed Work No. 14, the undertaker must offer back the freehold of those parcels to the previous freeholder at the time that compulsory acquisition powers were exercised, to the extent that the undertaker has—

- (a) acquired the freehold title to undertake Work No.14; and
- (b) put in place occupational arrangements with the occupiers at the time that compulsory acquisition powers were exercised to provide for their occupation of the reconfigured layout.

### **Time limit for exercise of authority to acquire land compulsorily**

**18.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by **article 21** (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by **article 25** (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**19.**—(1) The undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under **article 17** (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, **article 20** (private rights) and **article 27** (statutory undertakers), in the case of the Order land specified in column (1) of **Schedule 5** (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of **Schedule 6** (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) **Schedule 6** (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In exercising compulsory acquisition of rights the undertaker must not exercise Right E (as listed in **Schedule 5**) in order to carry out Work No. 16 without having first notified the Secretary of State in writing which one of the three cable option routes to link parcels 02/120 and 02/130 will be required for the authorised project being either parcels 02/124, 02/125, 02/140 and 02/135 (together option 1), parcels 02/122, 02/124, 02/125, 02/140 and 02/135 (together option 2) or parcel 02/121 (option 3) and must thereafter only implement compulsory acquisition of rights over land in respect of that selected option in order to deliver one of option 1, option 2 or option 3 for the cable installation between parcels 02/120 and 02/130.

(6) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

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(a) 1981 c.66. Sections 2, 6 and 11 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

## Private rights

20.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under **article 17** (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenant, extinguished in so far as in either case their continuance would be inconsistent with the acquisition—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under **article 19** (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or **article 27** (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of the land;
  - (iii) the undertaker's entry onto the land; or
  - (iv) the undertaker's taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

- 21.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, has effect with the following modifications.
- (3) In section 5B (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
  - (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in **article 18** (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X]”.
- (4) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.
- (5) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (6) All references to the 1965 Act in the 1981 Act will be construed as references to the 1965 Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

### **Application of Part 1 of the Compulsory Purchase Act 1965**

- 22.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified in accordance with paragraphs (2), (3) and (4).
- (2) In section 4A(1) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
  - (b) for “the three year period specified in section 4” substitute “the five year period mentioned in **article 18** (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X]”.
- (3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “**article 17** (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X]”
- (4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) omit paragraphs 1(2) and 14(2); and
  - (b) at the end insert—

## **“PART 4**

### **Interpretation**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under **article 25** (temporary use of land for carrying out the authorised development) or **article 26** (temporary use of land for maintaining the authorised development) of the Thanet Extension Wind Farm Order 201[X].”

### **Acquisition of subsoil only**

**23.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of **article 17** (compulsory acquisition of land) or **article 19** (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

### **Rights under or over streets**

**24.**—(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised project**

**25.**—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of **Schedule 7** (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; and
- (e) construct any works, or use the land, as specified in relation to that land of **Schedule 7** (land of which temporary possession may be taken), or any mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land,

remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of **Schedule 7** (land of which temporary possession may be taken), unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article; or
- (c) remove any new road surface or other improvements carried out under this article to any street specified in **Schedule 2** (streets subject to street works).

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to replace a building removed under this article.

(6) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under **article 19** (compulsory acquisition of rights) to the extent that such land is listed in column (1) of **Schedule 5**; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under **article 23** (acquisition of subsoil only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

### **Temporary use of land for maintaining the authorised project**

**26.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to comply with Paragraph (3) in a case of emergency and if an emergency exists they must—

- (a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and
- (b) comply with paragraph (1) so far as is reasonably possible in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) In this article "the maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which the authorised project first exports electricity to the national electricity transmission network.

### **Statutory undertakers**

27. Subject to the provisions of **Schedule 8** (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan within the limits to the land to be acquired and described in the book of reference; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

### **Recovery of costs of new connections**

28.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under **article 27** (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in



consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under **article 27** (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

## PART 6

### Operations

#### **Operation of generating station**

**29.**—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised project.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

#### **Deemed marine licences under the 2009 Act**

**30.** The marine licences set out in **Schedules 11 and 12** are deemed to have been granted under Part 4 of the 2009 Act (marine licensing) for the licensed marine activities set out in Part 3, and subject to the conditions set out in Part 4 of each licence.

## PART 7

### Miscellaneous and General

#### **Application of landlord and tenant law**

**31.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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(a) 2003 c.21.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease).

### **Operational land for purposes of the 1990 Act**

**32.** Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

### **Felling or lopping of trees and removal of hedgerows**

**33.—(1)** The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) Subject to the consent of the relevant local authority, the undertaker may, for the purposes of the authorised project, remove any hedgerows within the Order limits and remove the important hedgerows as are within the Order limits.

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(a).

### **Trees subject to tree preservation orders**

**34.—(1)** The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after July 2017 or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must cause no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.

(3) The authority given by paragraph (1) will constitute a deemed consent under the relevant tree preservation order.

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(a) S.I. 1997/1160.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

#### **Certification of plans etc.**

**35.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in **Schedule 12** (Documents to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made;

the reference in the plan or document concerned is construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

(4) Each programme, statement, plan, protocol or scheme listed in **Schedule 12** must be complied with as certified.

#### **Arbitration**

**36.**—(1) Subject to **Article 39** (Saving provisions for Trinity House), any dispute or decision under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) The procedure in sub-section (1) does not apply to the discharge of requirements under **Schedule 9**.

#### **Procedure in relation to certain approvals etc.**

**37.**—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and not be unreasonably withheld and if no response is received in writing within 28 days, or eight weeks if in accordance with **Schedule 9** of this Order, of the application or request being made, then any such approval is deemed to have been given.

(2) **Schedule 9** (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements 9, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28 and 29 in Part 3 of **Schedule 1** (requirements).

#### **Abatement of works abandoned or decayed**

**38.** Where Work No. 1(a) to (d) and Work No. 2 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work No. 1(a) to (d) and Work No. 2 or any relevant part of those works, without prejudice to any notice served under section 105(2) of the 2004 Act. The notice may also require the restoration of the site of the relevant part(s) of Work No. 1(a) to (d) and Work No. 2 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

## **Saving provisions for Trinity House**

**39.** Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

## **Crown rights**

**40.—(1)** Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee –

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) –
  - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land;
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) Consent under paragraph (1) may be given unconditionally or subject to terms and conditions and will be deemed to have been given in writing where it is sent electronically.

## **Protective provisions**

**41. Schedule 8** (protective provisions) has effect.

## **Funding**

**42.—(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.

Signed by authority of the Secretary of State for Business, Energy & Industrial Strategy

Address

Date

*Name*

Head of [Unit]

Department for Business, Energy & Industrial Strategy

## SCHEDULES

### SCHEDULE 1

Article 2

#### Authorised Project

#### PART 1

##### Authorised Development

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act which is located in the North Sea approximately 8km (at the closest point) from the Kent coast, comprising—

*Work No. 1—*

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 340 MW comprising up to 34 wind turbine generators each fixed to the seabed by one or more of the following foundation types: monopiles; three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations, fitted with rotating blades and situated within the area shown on the works plan and further comprising (b) to (e) below;
- (b) up to one meteorological mast fixed to the seabed within the area shown on the works plan by an associated foundation (namely one or more of the following: monopiles; three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations);
- (c) up to one Floating Lidar Device (FLD) and up to one wave buoy fixed to the seabed within the area shown on the works plan;
- (d) inter-array subsea cables and fibre optic cables within the area shown on the works plan between the wind turbine generators and between the wind turbine generators and Work No.2 including one or more cable crossings;
- (e) and associated development within the meaning of section 115(2) of the 2008 Act comprising—

*Work No. 2 –* An offshore substation fixed to the seabed within the area shown on the works plan by associated foundations, namely one of the following: monopiles; three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations.

*Work No. 3 –* Up to four offshore subsea export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore along routes within the Order Limits seaward of MLWS including one or more cable crossings as shown and demarcated on the works plan.

## **Intertidal Area**

*Work No. 3A* – Up to four subsea export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore between Work No. 3 and Work No. 3B seaward of MHWS at Pegwell Bay and where required works to facilitate horizontal directional drilling.

*Work No. 3B*—

- (a) In the event that export cables are required to cross the seawall by horizontal directional drilling, onshore connection works, including up to four export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore; and
- (b) In the event that the export cables cross the seawall by trenching, onshore connection works consisting of:
  - (i) up to four export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore;
  - (ii) a temporary cofferdam to facilitate the installation of cables through the sea wall; and
  - (iii) partial demolition of the sea wall and subsequent reinstatement of the sea wall on its existing alignment.

## **In the county of Kent, district of Thanet**

*Work No. 4*— Onshore connection works within Pegwell Bay Country Park consisting of up to four cable circuits and communications cables laid underground or from Work No. 3A to Work No. 5 running in a south westerly direction including a temporary works area.

*Work No. 4A*— Four subsea export cables and fibre optic cables connecting to up to four transition joint bays located below ground to facilitate onshore connection works within Pegwell Bay Country Park.

*Work No. 4B*— Four subsea export cables and fibre optic cables to facilitate onshore connection works within Pegwell Bay Country Park, and where required works to facilitate horizontal directional drilling.

*Work No. 5*— A new temporary construction compound within Pegwell Bay Country Park including a new temporary vehicular access and temporary widening and upgrades to an existing vehicular access from Sandwich Road and modifications to the junctions of access and Sandwich Road.

*Work No. 6*— Upgrading and widening of existing access from Sandwich Road.

## **In the county of Kent, district of Thanet and district of Dover**

*Work No. 7*— Onshore connection works consisting of up to four cable circuits and communication cables laid underground from Work No. 4 to Work No. 13 running in a south westerly direction and crossing the Minster Stream.

*Work No. 8*— A new temporary vehicular access track running in a north easterly direction from Sandwich Road to Work No. 7 including permanent modifications to the junction of the new vehicular access track and Sandwich and the permanent installation of an access gate.

*Works No. 9*— The construction of a temporary works area.

*Work No. 10*— Temporary widening and upgrade of an existing private road running in an easterly direction from Sandwich Road.

*Work No. 11*— The construction of a temporary works area.

### **In the county of Kent, district of Dover**

*Work No. 12*— Temporary widening and upgrade of an existing private road running in an easterly direction off the roundabout on the A256.

*Work No. 13*— A new onshore substation including a new vehicular access track from the private road off the eastern exit of the roundabout on the A256 and including onshore connection works to the extent that they connect to the onshore substation and onward connection works.

*Work No. 14*— Works to facilitate the construction of the onshore substation (Work No. 13) including a new temporary construction compound, relocation of Ministry of Justice vehicle holding area, removal and relocation of associated structures, vehicle parking, access ways, CCTV, security fencing, portable buildings and utilities connections.

*Works No. 15*— Substation landscaping and biodiversity enhancement area, including planting and hardstanding.

### **In the county of Kent, district of Thanet and district of Dover**

*Work No. 16*— Onshore connection works, consisting of up to two cable circuits and communications cables laid underground from Work No. 13 to the National Grid 400kV substation at Richborough Energy Park running in a westerly direction crossing under the A256 and then in a northerly direction including temporary works areas and modifications and upgrades to the existing Richborough Energy Park access off the A256.

### **Further Works**

In connection with Work Nos. 1 to 3 and above the MLWS to Work No. 3A and 3B to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which would not give rise to any materially new or materially different environmental effects from those assessed by the environmental statement including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock or concrete mattresses, with or without frond devices;
- (c) the removal of material from the seabed required for the construction of Work Nos. 1 to 3B and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation such as sandwave clearance, boulder clearance and pre-trenching and excavation of horizontal directional drilling exit pits; and
- (d) removal of static fishing equipment;

and in connection with such Work Nos. 4A to 16 to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which would not give rise to any materially new or materially different environmental effects from those assessed by the environmental statement including:

- (a) works to secure vehicular or pedestrian means of access including the creation of new tracks, footpaths, and widening, upgrades, creation of bell mouths, creation of temporary slip roads and improvements of existing tracks, footpaths and roads;
- (b) car parking areas, welfare facilities, temporary offices and workshops;
- (c) bunds, embankments, swales, landscaping, boundary treatments and works to mitigate any effects of the construction, operation or maintenance of the authorised project;
- (d) spoil and equipment storage;

- (e) jointing pits, manholes, marker posts, link boxes, earthing and other works associated with laying ducts and cables and fibre optic cables and pulling cables and fibre optic cables through cable ducts;
- (f) water supply works, foul drainage provision, surface water management systems, temporary drainage during installation of ducts, cables and fibre optic cables and at the onshore project substation and culverting;
- (g) works of restoration;
- (h) fencing or other means of enclosure;
- (i) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses located above the level of mean high water springs (MHWS);
- (j) working sites and mobilisation areas in connection with the construction of the authorised development;
- (k) bowzers, septic tanks, generators and standby generators;
- (l) works for the provision of apparatus including cabling, water and electricity supply works;
- (m) habitat creation and archaeological works; and
- (n) such other works, apparatus, plant and machinery of whatever nature as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project.

2. The grid coordinates for that part of the authorised project which is seaward of MHWS are specified below—

**Current Cable Corridor**

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 19' 22.104" N	1° 22' 19.234" E	25	51° 17' 56.042" N	1° 27' 8.120" E
2	51° 19' 24.560" N	1° 25' 18.600" E	26	51° 17' 58.278" N	1° 26' 14.982" E
3	51° 19' 38.342" N	1° 26' 20.851" E	27	51° 18' 46.821" N	1° 23' 12.172" E
4	51° 19' 36.695" N	1° 29' 9.324" E	28	51° 18' 52.541" N	1° 22' 57.260" E
5	51° 19' 43.095" N	1° 29' 43.272" E	29	51° 18' 52.380" N	1° 22' 16.747" E
6	51° 20' 14.158" N	1° 29' 56.342" E	30	51° 19' 5.968" N	1° 21' 41.601" E
7	51° 20' 37.339" N	1° 32' 25.827" E	31	51° 19' 6.137" N	1° 21' 41.660" E
8	51° 21' 43.399" N	1° 33' 16.785" E	32	51° 19' 7.241" N	1° 21' 41.937" E
9	51° 23' 14.222" N	1° 34' 45.212" E	33	51° 19' 8.626" N	1° 21' 42.154" E
10	51° 23' 56.937" N	1° 34' 47.892" E	34	51° 19' 10.154" N	1° 21' 42.190" E
11	51° 23' 22.059" N	1° 35' 37.689" E	35	51° 19' 10.485" N	1° 21' 42.234" E
12	51° 23' 7.263" N	1° 35' 36.158" E	36	51° 19' 10.812" N	1° 21' 42.364" E
13	51° 22'	1° 35'	37	51° 19'	1° 21'



14	46.107" N 51° 21' 27.502" N	21.177" E 1° 34' 2.352" E	38	11.135" N 51° 19' 12.534" N	42.594" E 1° 21' 44.013" E
15	51° 21' 15.621" N	1° 34' 0.605" E	39	51° 19' 12.994" N	1° 21' 44.441" E
16	51° 20' 34.127" N	1° 33' 19.312" E	40	51° 19' 12.995" N	1° 21' 44.448" E
17	51° 20' 18.448" N	1° 33' 21.294" E	41	51° 19' 18.092" N	1° 22' 2.648" E
18	51° 20' 8.251" N	1° 32' 54.654" E	42	51° 18' 25.807" N	1° 27' 42.379" E
19	51° 19' 48.474" N	1° 30' 48.676" E	43	51° 19' 5.515" N	1° 27' 38.768" E
20	51° 19' 41.109" N	1° 30' 36.146" E	44	51° 19' 6.818" N	1° 26' 4.122" E
21	51° 19' 17.641" N	1° 30' 27.963" E	45	51° 18' 53.151" N	1° 25' 40.946" E
22	51° 19' 3.953" N	1° 29' 13.879" E	46	51° 18' 38.800" N	1° 25' 25.266" E
23	51° 19' 4.793" N	1° 28' 30.568" E	47	51° 18' 22.978" N	1° 26' 25.434" E
24	51° 18' 2.205" N	1° 28' 36.240" E			

#### Array Area

<i>Point No</i>	<i>Latitude (DAS)</i>	<i>Longitude (DAS)</i>	<i>Point No</i>	<i>Latitude (DAS)</i>	<i>Longitude (DAS)</i>
1	51° 25' 33.041" N	1° 32' 30.523" E	8	51° 27' 38.815" N	1° 38' 7.249" E
2	51° 27' 40.652" N	1° 32' 53.134" E	9	51° 27' 38.873" N	1° 36' 4.331" E
3	51° 28' 13.973" N	1° 33' 56.681" E	10	51° 26' 34.609" N	1° 34' 10.445" E
4	51° 28' 19.898" N	1° 41' 47.085" E	11	51° 24' 9.695" N	1° 37' 39.727" E
5	51° 27' 7.350" N	1° 43' 30.472" E	12	51° 24' 3.060" N	1° 41' 16.044" E
6	51° 22' 44.323" N	1° 41' 30.864" E	13	51° 25' 27.649" N	1° 41' 16.429" E
7	51° 23' 2.085" N	1° 36' 6.194" E			

## PART 2

### Ancillary Works

1. Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and maintenance of the authorised development;

- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development; and
- (d) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which would not give rise to any materially new or materially different environmental effects from those recorded in the environmental statement.

## PART 3

### Requirements

#### **Time limits**

1. The authorised project must commence no later than the expiration of five years beginning with the date this Order comes into force.

#### **Detailed offshore design parameters**

2.—(1) Subject to paragraph (2), wind turbine generators forming part of the authorised project must not—

- (a) exceed a height of 250 metres when measured from HAT to the tip of the vertical blade;
- (b) exceed a height of 140 metres to the height of the centreline of the generator shaft forming part of the hub when measured from HAT;
- (c) exceed a rotor diameter of 220 metres;
- (d) be less than 480 metres from the nearest wind turbine generator in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 716 metres from the nearest wind turbine generator in either direction which is in line with the approximate prevailing wind direction (downwind); and
- (e) have a draught height of less than 22 metres from MHWS.

(2) References to the location of a wind turbine generator in paragraph (1) above are references to the centre point of that turbine.

3.—(1) The total number of offshore substations forming part of the authorised project must not exceed one, and the total number of meteorological masts must not exceed one and the total number of Floating Lidar Devices must not exceed one, and the total number of wave buoys must not exceed one.

(2) The dimensions of the offshore substation forming part of the authorised project (excluding towers, helipads, masts and cranes) must not exceed 55 metres in height when measured from HAT, 70 metres in length and 50 metres in width.

(3) Each meteorological mast must not exceed a height of 140 metres above HAT.

(4) Each meteorological mast must not have more than one supporting foundation.

4.—(1) The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 1 (inter array)	64 kilometres	34,750m <sup>3</sup>
Work No. 3, 3A, 4A, 4B (export cable)	120 kilometres	145,000m <sup>3</sup>

(2) In relation to a wind turbine generator, meteorological mast or an offshore substation, each jacket foundation must not have—

- (a) a width spacing between its legs at the level of the seabed which is more than 40 metres;
- (b) a pile diameter which is more than four metres in the case of pin piles or a suction caisson diameter which is more than 20 metres;
- (c) more than one pile per leg or more than one suction caisson per leg; and
- (d) more than four legs.

(3) In relation to a wind turbine generator, meteorological mast or an offshore substation each monopile foundation forming part of the authorised development must not have a diameter which is more than 10 metres.

5. The total amount of scour protection for the wind turbine generators, meteorological masts and offshore substations forming part of the authorised development must not exceed 1,191,187.2m<sup>3</sup>.

6.—(1) None of the infrastructure listed in Work No.1 (a) to (c), Work No. (2), nor Ancillary Works (a), (c) and (d) may be installed within the structures exclusion zone, whose coordinates are specified below—

**Structures Exclusion Zone**

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 28' 13.973" N	1° 33' 56.681" E
2	51° 28' 15.183" N	1° 35' 29.471" E
3	51° 27' 23.628" N	1° 33' 46.501" E
4	51° 24' 45.426" N	1° 33' 51.671" E
5	51° 23' 1.317" N	1° 36' 20.336" E
6	51° 23' 2.085" N	1° 36' 6.194" E
7	51° 25' 33.041" N	1° 32' 30.523" E
8	51° 27' 40.652" N	1° 32' 53.134" E

(2) No part of any wind turbine generator, including its blades, may oversail into the structures exclusion zone.

**Aviation safety**

7. The undertaker must exhibit and maintain such lights, with such shape, colour and character as are required by the Air Navigation Order 2016(a), and as otherwise directed as necessary for aviation safety by the Defence Infrastructure Organisation Safeguarding and the CAA.

**Offshore decommissioning**

8. No offshore works may commence until a written decommissioning programme in compliance with any notice that may be served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act has been submitted to and approved by the Secretary of State.

**Stages of authorised development onshore**

9.—(1) The connection works may not be commenced until a written scheme setting out the stages of the connection works has been submitted to the relevant planning authority.

(2) The undertaker must notify the relevant planning authority that it is commencing work for each and every stage of the connection works in writing at least five days prior to commencement of that stage.

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(a) S.I. 2016.765.

### **Approvals of documentation in relation to Works 3A and 3B**

10.—(1) Each programme, statement, plan, protocol or scheme required to be approved in relation to Works 3A and 3B may, where required, be approved by more than one statutory body in whole or in part.

(2) If all or any part of such document referred to in paragraph (1) requires approval by more than one discharging authority, those discharging authorities will consult with one another prior to giving their requisite approvals in accordance with the provisions of this Order.

### **Detailed design parameters onshore**

11.—(1) The total number of buildings housing the principal electrical equipment for the onshore substation comprised in Work No. 13 must not exceed one.

(2) Construction works for the building referred to in paragraph (1) above must not commence until details of the layout, scale and external appearance of the same have been submitted to and approved by the relevant planning authority. The onshore substation must be carried out in accordance with the approved details.

(3) Any details provided by the undertaker pursuant to paragraph (2) must accord with the design and access statement.

(4) The building comprised in Work No. 13 must not exceed a height of 14 metres above existing ground level and external electrical equipment comprised in Work No. 13 must not exceed a height of 12.5 metres above existing ground level.

### **Landfall works notification**

12. No part of Work No. 3B may commence until written notification is provided to the relevant planning authority confirming which one option of Work No. 3B(a) or 3B(b) will be constructed. The notification must include the anticipated timing of the proposed works being undertaken.

### **Saltmarsh mitigation, reinstatement and monitoring plan**

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.

### **Access management strategy**

14.—(1) No stage of the connection works within Pegwell Bay Country Park or potentially affecting a Public Right of Way may commence until for that stage an access management strategy (which must accord with the outline access management strategy) has been submitted to and approved by the relevant planning authority;

(2) The access management strategy must be implemented as approved.

### **Onshore substation landscaping**

15.—(1) Prior to the construction of above ground permanent infrastructure for the onshore substation a substation landscaping management scheme (which accords with the outline

landscape and ecological management plan) will be submitted to and approved by the relevant planning authority.

(2) The substation landscaping management scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting, including any trees;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (h) details of existing trees to be retained with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant;
- (j) implementation timetables for all landscaping works;
- (k) maintenance of the landscaping, including irrigation arrangements in relation to Work No. 13; and
- (l) soil retention, handling and protection.

(3) The substation landscaping management scheme must be implemented as approved.

### **Implementation and maintenance of landscaping**

**16.**—(1) All landscaping works must be carried out in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping management scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

### **Highway accesses**

**17.**—(1) No stage of the connection works may commence until for that stage written details of the siting, design, and layout for any new, permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has been submitted to and approved by the relevant highway authority.

(2) The highway accesses for that stage must be constructed or altered and the works described in paragraph (1) above must be carried out, in accordance with the approved details before they are brought into use for the purposes of the authorised development.

### **Construction Environmental Management Plan**

**18.**—(1) No stage of the connection works may commence until for that stage a construction environmental management plan (which must accord with the code of construction practice) has been submitted to and approved by the relevant local planning authority.

(2) The construction environmental management plan must contain details of—

- (a) relevant health, safety and environmental legislation and compliance;
- (b) local community liaison responsibilities;
- (c) site security;

- (d) biosecurity measures;
- (e) lighting;
- (f) soil management;
- (g) dust control measures;
- (h) flood risk and surface water management;
- (i) waste management; and
- (j) any water crossings not requiring consent pursuant to the Land Drainage Act 1991.

(3) The construction environmental management plan must be implemented as approved in relation to the relevant stage of the construction works.

### **Temporary fencing and other means of enclosure**

19.—(1) No stage of the connection works may commence until for that stage written details of proposed temporary fences or other means of temporary enclosure of the connection works for that stage have been submitted to and approved by the relevant planning authority. The fencing and other means of enclosure must be installed as approved.

(2) All construction sites must remain securely fenced in accordance with the approved details at all times during construction of the relevant stage of the connection works.

(3) Any temporary fencing must be removed on completion of the relevant stage of the connection works.

(4) Pre-commencement works relating to the erection of any temporary means of enclosure or temporary fencing must only take place in accordance with the written details of the proposed temporary fences or other means of temporary enclosure of the connection works for that stage, which has been submitted to and approved by the relevant local authority.

### **Onshore substation surface water and drainage management plan**

20.—(1) Construction of any part of the onshore substation at Work No. 13 may not commence until a surface water and drainage management plan has, after consultation with the relevant drainage authority, been submitted to and approved by the relevant planning authority.

(2) The surface water and drainage management plan must include a surface water drainage scheme for Work No. 13, which is based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development.

(3) The surface water and drainage management plan must be implemented as approved.

### **Contaminated land and groundwater plan**

21.—(1) No stage of the connection works may commence until for that stage a contaminated land and groundwater plan (which must accord with the code of construction practice) to mitigate the potential for release of contaminants within the Order limits has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The contaminated land and groundwater plan must be implemented as approved.

(3) Pre-commencement works relating to any required remedial work in respect of any contamination or other adverse ground conditions must only take place in accordance with the contaminated land and groundwater plan for that stage, which has been submitted to and approved by the relevant local authority.

### **Construction noise and vibration management plan**

22.—(1) No stage of the connection works may commence until a noise and vibration management plan (which must accord with the code of construction practice) has for that stage been submitted to and approved by the relevant planning authority.

- (2) The noise and vibration management plan must set out the particulars of—
  - (a) the construction works, and the method by which they are to be carried out;
  - (b) the noise attenuation measures to be taken to minimise noise resulting from the construction works, including any noise limits; and
  - (c) a scheme for monitoring the noise during the construction works to ensure compliance with the noise limits and effectiveness of the attenuation measures.
- (3) The noise and vibration management plan must be implemented as approved.

#### **Construction traffic management plan**

**23.**—(1) No stage of the connection works may commence until a construction traffic management plan which must accord with the code of construction practice has for that stage been submitted to and approved by the relevant highway authority.

- (2) The construction traffic management plan must set out the particulars of—
  - (a) scheduling and timing of movements;
  - (b) temporary warning signs and traffic control; and
  - (c) construction vehicle routeing.
- (3) The construction traffic management plan must be implemented as approved.

#### **Onshore archaeological written scheme of investigation**

**24.**—(1) No stage of the connection works may commence until for that stage an onshore archaeological written scheme of investigation (which accords with the onshore archaeology written scheme of investigation) has, after consultation with Historic England and Kent County Council, been submitted to and approved by the relevant planning authority.

(2) In the event that site investigation is required, the scheme must include details of the following—

- (a) an assessment of significance and research questions;
- (b) the programme and methodology of site investigation and recording;
- (c) the programme for post investigation assessment;
- (d) provision to be made for analysis of the site investigation and recording;
- (e) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (f) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (g) nomination of a competent person or organisation to undertake the works set out within the onshore archaeology written scheme of investigation.

(3) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

(4) In the event that site investigation is required, the site investigation and post investigation assessment must be completed for that stage in accordance with the programme set out in the onshore archaeological written scheme of investigation and provision made for analysis, publication and dissemination of results and archive deposition secured for that stage.

(5) Pre-commencement works for any stage of the connection works relating to archaeological investigations must only take place in accordance with a specific onshore archaeological written scheme of investigation that has been submitted to and approved by the relevant local authority.

(6) Any pre-commencement works of an intrusive nature must not be undertaken prior to the approval of the onshore archaeological written scheme of investigation submitted in accordance with sub-paragraph (5).

### **Landscape and Ecological Mitigation plan**

**25.**—(1) No stage of the connection works may commence until for that stage a written landscape and ecological mitigation plan (which accords with the outline landscape and ecological management plan) reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The landscape and ecological mitigation plan must include an implementation timetable and must be carried out as approved.

### **Seasonal restriction in respect of non-breeding waterbirds**

**26.**—(1) The undertaker must ensure that no percussive piling activity within Work Nos. 3A and 3B takes place between 1st October to 31st March (inclusive) of any year.

(2) The undertaker must ensure that no construction works or planned operation and maintenance works take place within Work Nos. 3A and 3B between 1st October to 31st March (inclusive) of any year.

### **Construction hours**

**27.**—(1) Construction work for the connection works must only take place between 0700 hours and 1900 hours Monday to Saturday, with no activity on Sundays or bank holidays, except as specified in paragraph (2).

(2) Outside the hours specified in paragraph (1), construction work may be undertaken for essential activities including but not limited to:

- (a) continuous periods of operation that are required as assessed in the environmental statement, such as concrete pouring, drilling and pulling cables (including fibre optic cables) through ducts;
- (b) fitting out works associated with the onshore substation comprised within Work No. 13;
- (c) delivery to the connection works of abnormal loads that may cause congestion on the local road network;
- (d) connection works carried out on the foreshore;
- (e) daily start up or shut down;
- (f) works required that may necessitate the temporary closure of roads;
- (g) electrical installation;
- (h) non-destructive testing; and
- (i) emergency works.

(3) Outside the hours specified in paragraph (1), construction work may be undertaken in relation to any horizontal directional drilling in accordance with the assessment undertaken within the environmental statement.

(4) All construction work undertaken in accordance with paragraph (2)(a) to (2)(i) and (3) must be agreed with the relevant planning authority in writing in advance, and must be carried out within the agreed time.

### **Control of noise during operational phase**

**28.**—(1) Work No. 13 must not commence operation until an operational noise management plan including monitoring, attenuation and any applicable noise limits for the use of Work No. 13 has been submitted to and approved by the relevant planning authority.

(2) The operational noise management plan must be implemented as approved and maintained for the duration of use of the authorised development.



### **Onshore decommissioning**

29.—(1) Within six months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to and approved by the relevant planning authority.

(2) The decommissioning plan must be implemented as approved.

### **Pilotage displacement**

30.—(1) No part of the authorised development may commence within the shaded area north of a line as shown on the works plan (offshore) located between point 1 and point 2, which is an east-west line from the most north westerly wind turbine generator of the existing Thanet Offshore Wind Farm to the centre point of the NE RACON buoy, unless the Secretary of State has first approved a scheme of mitigation.

(2) The scheme of mitigation will take into account any evidence provided by the Port of London Authority to the undertaker.

(3) The scheme of mitigation referred to in this requirement must be implemented as approved.

(4) In this requirement:

“scheme of mitigation” means a compensation mechanism to mitigate any relocation of pilotage caused by the charted relocation of the Tongue Deep Water Diamond recognised by UK Hydrographic Office following the approval of final wind turbine generator positions and other evidenced physical displacement of pilotage.

“relocation” means  $(C) = (B) - (A)$  and where (C) is a positive integer; and where (A) is the measurement of the centre point of the nearest Thanet Offshore Wind Farm WTG to the centre point of the current DWD; where (B) is the measurement of the centre point of the nearest Thanet Offshore Wind Farm WTG to the centre point of the relocated DWD; and where (C) is the change in distance or alignment in nautical miles caused by the authorised development between the current and relocated DWD.

“evidence base” means an objective body of evidence providing details of the historic use of the Tongue Deep Water Diamond known to date, which will then be used to define the predicted number of transfers that will take place during the operation of the authorised development and therefore the expected displacement for pilotage, where: (a) the Tongue Deep Water Diamond area is defined as including a 1 nautical mile radius around the current location of the Tongue Deep Water Diamond; (b) evidence gathered is based on an analysis of AIS data for the Tongue Deep Water Diamond area identifying the numbers of pilotage that transit to the Tongue Deep Water Diamond; and (c) any evidence as provided by the Port of London Authority under sub-paragraph (2) will be taken into account.

### **Requirement for written approval**

31. Where under any of the above requirements the approval or agreement of the Secretary of State, the relevant planning authority or another person is required, that approval or agreement must be given in writing.

### **Amendments to approved details**

32.—(1) With respect to any requirement which requires the authorised development or any part of it to be carried out in accordance with the details, plans or schemes approved under this Schedule, the approved details, plans or schemes are, subject to sub-paragraph (2), taken to include any amendments or variations that may subsequently be approved in writing by the relevant planning authority in consultation with any other person specified in the requirement in question, or approved in writing by the relevant planning authority or another approval authority.

(2) Any amendments to or variations from any details, plans or schemes approved pursuant to these requirements must be minor or immaterial and in order to obtain approval to such amendments or variations it must be demonstrated to the reasonable satisfaction of the relevant

planning authority that the subject matter of the approval sought is not likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### Pre-commencement works

33.—(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-paragraphs (1) and (2) may be submitted separately and in advance of the details required to discharge the requirement in advance of commencement.

## SCHEDULE 2

Article 8

### Streets subject to Street Works

<i>(1) Area</i>	<i>(2) Street subject to street work</i>
District of Thanet	SANDWICH ROAD at reference point A-B on the onshore street works plan
District of Thanet	SANDWICH ROAD at reference point C-D on the onshore street works plan
District of Dover	SANDWICH ROAD at reference point E-F on the onshore street works plan
District of Dover	SANDWICH ROAD at reference point G-H on the onshore street works plan
District of Dover	A256 at reference point I-J on the onshore street works plan
District of Dover	A256 at reference point K-L on the onshore street works plan
District of Dover	A256 at reference point M-N on the onshore street works plan

## SCHEDULE 3

Article 9

### Public Rights of Way to be Temporarily Stopped Up

<i>(1) Area</i>	<i>(2) Public rights of way to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
District of Thanet	England Coastal Path	Approximately 225 metres of footpath reference England Coastal Path shown in orange between points marked A-B on the public rights of way to be temporarily stopped up plan
District of Thanet	England Coastal Path	Approximately 58 metres of footpath reference England Coastal Path shown in orange

District of Thanet	England Coastal Path	between points marked C-D on the public rights of way to be temporarily stopped up plan Approximately 48 metres of footpath reference England Coastal Path shown in orange between points marked E-F on the public rights of way to be temporarily stopped up plan
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## SCHEDULE 4

Article 11

### Access to Works

<i>(1) Area</i>	<i>(2) Description of access</i>
District of Thanet	Vehicular access from SANDWICH ROAD to the east marked at point A on the access to works plan
District of Thanet	Vehicular access from SANDWICH ROAD to the east marked at point B on the access to works plan
District of Thanet	Vehicular access from SANDWICH ROAD to the east marked at point C on the access to works plan
District of Dover	Vehicular access from SANDWICH ROAD to the south marked at point D on the access to works plan
District of Dover	Vehicular access from the A256 to the east marked at point E on the access to works plan
District of Dover	Vehicular access from the A256 to the east marked at point F on the access to works plan
District of Dover	Vehicular access from the A256 to the west marked at point G on the access to works plan

## SCHEDULE 5

Article 19

### Land in which only New Rights etc., may be acquired

<i>(1) Number of land shown on land plan</i>	<i>(2) Purpose for which rights may be acquired</i>
Right A Landfall Plots 01/15 and 01/20	1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—  (a) construct, lay and install by way of drilling or trenching and construct and repair, renew, upgrade, inspect, remove and replace underground electrical cables and ducts, jointing works including transition joint bays and other apparatus together with such telemetry and fibre optic lines, structures, jointing works, ducting and other apparatus, protection and safety

measures and equipment which is ancillary to the purposes of conveying electricity along such electrical cables (which collectively for the purposes of this schedule are referred to as the “cables”);

- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) effect access to offshore apparatus and carry out works for the purposes of construction, installation, operation, maintenance and decommissioning of the parts of the authorised project that communicate between the onshore and offshore elements of the authorised project;
- (d) install, retain, and connect apparatus to connect onshore electrical apparatus to offshore electrical apparatus;
- (e) enter and be upon the land and remain with or without plant, vehicles, vessels, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity along the cables, or use of the cables, cable ducts and jointing works;
- (f) retain and use the cables, cable ducts and jointing pits for the purpose of the conveyance of telecommunications and electricity;
- (g) pass and repass with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying down, installing, adjusting, altering, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (h) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (i) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing,

upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;

- (j) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (k) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (l) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduit or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers); and
- (m) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass.

#### Right B

##### Access tracks

Plots 01/25, 01/30, 01/35, 01/40, 01/45, 01/85, 01/90, 01/95, 01/100, 01/110, 01/115, 01/120, 01/125, 02/20, 02/40, 02/50, and 02/80

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
- (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right

to pass and repass to adjoining land;

- (e) retain and maintain existing temporary permissive paths and lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (i) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised project.

Right C  
Full cable rights Plots 01/60, 01/65 and 01/70

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling or trenching;
- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining,

repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;

- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
- (f) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (i) remove, store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of

statutory undertakers);

- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;
- (q) when the cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land electric lines, telecommunications, ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

2. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining



land and highway;

- (c) erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to adjoining land;
- (e) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (f) effect access to the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the exercise of the rights); and
- (i) retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 2 means such other parts of the land within the Order limits required for the authorised project.

3. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant and materials and equipment;

- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
  - (e) effect access and egress to and from the highway;
  - (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and
  - (g) access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.
4. A restrictive covenant over the land for the benefit of the remainder of the Order land to—
- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
  - (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
  - (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land;
  - (d) prevent the planting or growing within the Order land of any trees, shrubs or

underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker; and

- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Right D  
Full cable rights; with access to highway  
Plots 02/120

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading,

inspecting and removing the cables, cable ducts and jointing works;

- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
- (f) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (i) remove, store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be

materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;

- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;
- (q) when the cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land electric lines, telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

2. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant, materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) effect access and egress to and from the highway;
- (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and
- (g) access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.

3. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
- (c) erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges for the purposes of enabling the right to pass and repass to adjoining land;
- (e) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (i) retain, maintain, install, use, inspect, modify, improve, maintain, adjust,

repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 3 means such other parts of the land within the Order limits required for the authorised project.

4. A restrictive covenant over the land for the benefit of the remainder of the Order land to—
- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
  - (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
  - (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land;
  - (d) prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project) provided that the growing within the land of any pre-existing trees, shrubs or underwood do

not require the consent of the undertaker; and

- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Right E

Full cable rights (not including effecting access to the highway)

Plots 01/75, 01/80, 02/10, 02/15, 02/30, 02/35, 02/121; 02/122; 02/123; 02/124; 02/125, 02/135 and 02/140

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling, and trenching;
- (b) retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
- (f) retain and use the cables for the



purposes of the conveyance of telecommunications and electricity;

- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (i) remove store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, during any

periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;

- (q) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

2. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant, materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and
- (f) access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.

3. A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supporting structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with

concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);

- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land; prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project); and
- (d) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Right F  
Minor crossings inc. highway  
Plots 02/90, 02/95, 02/100, 02/110, 02/105 and  
02/115

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) retain, maintain, install, use, inspect, modify, improve, maintain, adjust,

repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables and cable ducts;
- (f) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and cable ducts;
- (h) install and maintain cable marker posts to identify the location of the cables and cable ducts as required for routine integrity testing;
- (i) remove store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers

following the end of each period of the exercise of the rights);

- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables and cable ducts;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables and cable ducts;
- (q) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

Right G

Full cable rights with connection to substation  
Plots 02/130

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) construct and maintain any apparatus necessary to connect into cable sealing ends and the National Grid substation;
- (c) retain, maintain, install, use, inspect,

modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

- (d) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (e) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (f) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
- (g) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (h) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (i) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (j) remove store and stockpile materials (including excavated material) within the Order land;
- (k) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any

temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);

- (l) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
  - (m) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
  - (n) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
  - (o) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;
  - (p) carry out environmental mitigation, remediation and enhancement works;
  - (q) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;
  - (r) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
  - (s) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.
2. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to—
- (a) enter upon the land and to create temporary secure areas;

- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant and materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) effect access and egress to and from the highway;
- (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and
- (g) access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.

3. A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in



order to exercise their rights in relation to their apparatus within the Order land;

- (d) prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project); and
- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

#### Right H

Seaward cable rights

Plots 00/01, 00/02, 00/03, 00/05, 00/10, 00/15, 01/01, 01/02, 01/05 and 01/06

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (c) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables and cable ducts;
- (d) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (e) place and use plant, machinery and temporary structures within the land

for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and cable ducts;

- (f) remove materials (including excavated material) within the Order land;
- (g) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (h) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables and cable ducts;
- (i) carry out environmental mitigation, remediation and enhancement works;
- (j) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (k) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

Right I  
Sea wall installation  
Plots 01/10 and 01/11

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and trenching;
- (b) retain, repair, renew, upgrade, strengthen, maintain, inspect, remove and replace existing structures including the existing sea wall to support and protect the cables, cable ducts and jointing works;
- (c) effect access to offshore apparatus and carry out works for the purposes of construction, installation, operation, maintenance and decommissioning of the parts of the authorised project that communicate between the onshore and

offshore elements of the authorised project;

- (d) install, retain, and connect apparatus to connect onshore electrical apparatus to offshore electrical apparatus;
- (e) retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (f) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (g) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (h) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables and cable ducts;
- (i) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (j) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and cable ducts;
- (k) install and maintain cable marker posts to identify the location of the cables and cable ducts as required for routine integrity testing;
- (l) remove store and stockpile materials (including excavated material) within the Order land;
- (m) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading,

improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);

- (n) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (o) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (p) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (q) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables and cable ducts;
- (r) carry out environmental mitigation, remediation and enhancement works;
- (s) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables and cable ducts;
- (t) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (u) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

## Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights

### Compensation Enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

### Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

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(a) 1973 c.26.

## “SCHEDULE 2A

### Counter-Notice Requiring Purchase of Land

#### **Introduction**

1.—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

(2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is nine metres or more below the surface).

2. In this Schedule “house” includes any park or garden belonging to a house.

#### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the undertaker to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

#### **Response to counter-notice**

5. On receiving a counter-notice the undertaker must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The undertaker must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the undertaker decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the undertaker does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the undertaker serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

#### **Determination by Upper Tribunal**

10. On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and

- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10 it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the undertaker ought to be required to take some or all of the house, building or factory the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the undertaker ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the undertaker withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

**6.** The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

**7.** Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

**8.** Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

**9.** Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

## SCHEDULE 7

Article 23

### Land of which Temporary Possession may be taken

<i>(1) Area</i>	<i>(2) Number of land shown on land plan</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Part of the authorised project</i>
District of Thanet	00/01, 00/02, 00/03, 00/05, 00/10, 00/15, 01/01, 01/02, 01/05, 01/06, 01/10, 01/11, 01/15, 01/20	Facilitating construction and carrying out the authorised project; carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 3A, 3B, 4, 4A and 4B
District of Thanet	01/25, 01/30, 01/35, 01/40, 01/45	Laying of hardstanding and improvements to tracks access for carrying out the authorised project.	Work Nos. 4, 4A, 4B, 5, 6 and 7
District of Thanet	01/50	Facilitating construction and carrying out Work No. 5; construction and laydown, carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 4, 4A, 4B, 5, 6, 7, 8, 9, 10, 11, 12 and 16
District of Thanet	01/55	Upgrading and widening the existing access way to facilitate access for carrying out the authorised project.	Work Nos. 4, 4A, 4B, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16
District of Thanet	01/60, 01/65, 01/70, 01/75, 01/80	Facilitating construction and carrying out the authorised project; carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 4, 4A, 4B, 5, 6 and 7
District of Dover	01/85, 01/90, 01/95, 01/100, 01/110, 01/115, 01/120, 01/125, 02/20, 02/40, 02/50, 02/80	Laying of hardstanding and improvements to tracks access for carrying out the authorised project	Work Nos. 4, 4A, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16
District of Dover	01/105, 02/05	Facilitating construction and carrying out Work No. 9; construction and laydown, carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16



District of Dover	02/10, 02/15, 02/30, 02/35, 02/90, 02/95, 02/100, 02/105, 02/110, 02/115, 02/120, 02/121, 02/122, 02/123, 02/124, 02/125, 02/130, 02/135, 02/140	Facilitating construction and carrying out the authorised project; carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 7, 13, 14, 15 and 16
District of Dover	02/25	Facilitating construction and carrying out Work No. 11; construction and laydown, carrying out the authorised project; access for carrying out the authorised project.	Work Nos. 7, 9, 10, 11, 12, 13, 14, 15 and 16

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## SCHEDULE 8

Article 41

### Protective Provisions

#### PART 1

##### Protection for Electricity, Gas, Water and Sewerage Undertakers

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions must, unless otherwise agreed in writing between the undertaker and the affected undertaking concerned, have effect.

2. In this part of this Schedule—

“affected undertaker” means

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989(a);
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(c); and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that electricity undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

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(a) 1989 c.29. Section 64 sub-paragraph (1) was amended by section 108 and paragraphs 24, 38(1), (3) of Part II of Schedule 6 of the Utilities Act 2000.

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(c) 1991 c.56.

(c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991 at the time of the works mentioned in this Part; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of an affected undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use all reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with **article 36** (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with **article 36** (arbitration), and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation

the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**6.—**(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights will be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with **article 36** (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator will make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**7.—**(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker will be entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker will not be required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with **article 36** (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise will be made without the consent of the undertaker

which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**10.** Any dispute arising between the undertaker and the affected undertaker under this Schedule must, unless otherwise agreed in writing between the undertaker and the affected undertaker, be determined by arbitration in accordance with **article 36** (arbitration).

**11.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### For the Protection of National Grid as Electricity and Gas Undertaker

#### Application

**1.** For the protection of the National Grid referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the promoter and National Grid, have effect.

#### Interpretation

**2.** In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable the National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that electricity undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in **article 2** of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in **article 2** of this Order and commencement must be construed to have the same meaning save that for the purpose of this part only the term commence includes operations consisting site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure and temporary hard standing;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the promoter to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means, as appropriate—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH and any successor to their licence under Part 1 of the Electricity Act 1989; and
- (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH and any successor to their licence under Part 1 of the Gas Act 1986.

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“promoter” means the undertaker as defined in **article 2** of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 8(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 8(2) or otherwise; and
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”);

(2) Except for paragraphs 3 (apparatus of undertakers in stopped up streets), (retained apparatus: protection), (expenses) and (compensation) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the promoter and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

(3) Notwithstanding Art 25(5) or any other powers in the Order generally, s85 of the 1991 Act in relation to costs sharing and the powers in respect of cost sharing generally including the regulations made thereunder does not apply in relation to any diversion of apparatus of National Grid under the 1991 Act.

### **Apparatus of Undertakers in stopped up streets**

3. Notwithstanding the temporary stopping up or diversion of any highway under the powers of **article 10** (Temporary stopping up of streets), National Grid will be at liberty at all times to take

all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Acquisition of land**

4. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the promoter may not acquire any land interest or apparatus or override any easement and/or other interest of National Grid otherwise than by agreement.

5. As a condition of agreement between the parties in paragraph 1, prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the undertaker and the promoter) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as the undertaker reasonably and necessarily requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the promoter acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

6. The promoter and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the undertaker and/or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

7. Any agreement or consent granted by the undertaker under paragraph 8 or 9 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under paragraph 4.

### **Removal of apparatus**

8.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the promoter requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the promoter must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 9(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the promoter; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the promoter, or the promoter is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the promoter, as soon as possible take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the promoter's assistance if required by National Grid, save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the promoter under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the promoter.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

9.—(1) Where, in accordance with the provisions of this Part of this Schedule, the promoter affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the promoter and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid, acting reasonably.

(2) If the facilities and rights to be afforded by the promoter and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, in the matter may be referred to arbitration in accordance with paragraph 17 (Arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the promoter to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection Gas Undertakers**

10.—(1) The promoter must provide technical information relevant to any specified works to National Grid as soon as reasonable practicable after it becomes available, and will seek to liaise with National Grid as early as reasonably practicable regarding the specified works.

(2) Not less than 56 days before the commencement of any specified works the promoter must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(3) The plan to be submitted to National Grid under sub-paragraph (2) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and



(f) any intended maintenance regimes.

(4) The promoter must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus provided that such modifications are requested by National Grid within a period of 56 days unless otherwise agreed between the parties, beginning with the date on which the plan under sub-paragraph (2) is submitted to it. For the avoidance of doubt, provided that any further iterations of the plan submitted to National Grid for approval as a result of modifications required under this paragraph are not materially different to the modifications previously made by National Grid, any further required modifications will be made by the promoter as soon as reasonably practicable thereafter and in any event within 56 days of receipt of any further plans.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the promoter and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (6) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (1) or (2) (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (5) or (6) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the promoter under paragraph 8(2).

(10) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The promoter will not be required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order the promoter must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the promoter must implement an appropriate ground mitigation scheme

save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 12.

### **Retained apparatus: Protection of Electricity Undertakers**

11.—(1) The promoter must provide technical information relevant to any specified works to National Grid as soon as reasonably practicable after it becomes available, and will seek to liaise with National Grid as early as reasonably practicable regarding the specified works.

(2) Not less than 56 days before the commencement of any specified works, the promoter must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(3) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (2) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(4) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (2) must, in addition to the matters set out in sub-paragraph (3), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(5) The promoter must not commence any works to which sub-paragraphs (3) or (4) apply until National Grid has given written approval of the plan so submitted.

(6) Any approval of National Grid required under sub-paragraph (5)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (3) or (4); and
- (b) must not be unreasonably withheld.

(7) In relation to any work to which sub-paragraphs (3) or (4) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(8) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraphs (3), (4) or (7), as approved or as amended from time to time by agreement between the promoter and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (7) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(9) Where National Grid requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(10) If National Grid in accordance with sub-paragraphs (7) or (8) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs (7) to (8) apply as if the removal of the apparatus had been required by the promoter under paragraph 8(2).

(11) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(12) The promoter will not be required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order, the promoter must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**12.**—(1) Subject to the following provisions of this paragraph, the promoter must pay to National Grid on demand all charges, costs and expenses reasonably and properly anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) (i) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid
- (ii) using its own compulsory purchase powers to acquire any necessary rights under paragraph 4; and/or
- (iii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any necessary diversion work or the provision of any alternative apparatus;

- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated;

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the promoter or, in default of agreement, is not determined by arbitration in accordance with **article 36** (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the promoter.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Compensation**

**13.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable

to pay any amount to any third party or National Grid incurs any liability as a result of the transfer of undertaking under **Article 5**, the promoter will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) compensate National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the promoter or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the promoter from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the promoter in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the promoter with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or **article 5** (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Part of this Schedule including this paragraph 13.

(4) National Grid must give the promoter reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

### **Enactments and agreements**

**14.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the promoter, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the promoter and National Grid in respect of any apparatus laid or erected in land belonging to the promoter on the date on which this Order is made.

### **Co-operation**

**15.—(1)** Where in consequence of the proposed construction of any of the authorised works, the promoter or an undertaker requires the removal of apparatus under paragraph 8(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the promoter must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the promoter for that purpose.

(2) For the avoidance of doubt whenever the undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by National Grid or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

### **Access**

**16.** If in consequence of the agreement reached in accordance with paragraph 4 or the exercise of any of the powers granted under this Order, National Grid’s access to any apparatus is materially obstructed, the promoter must provide such alternative means of access to such

apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### Arbitration

17. Save for any differences or disputes arising under paragraph 8(2), 8(4), 9(1), 10 and 11, any difference or dispute arising between the promoter and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the promoter and National Grid, be determined by arbitration in accordance with **article 36** (arbitration).

### Notices

18. The plans submitted to National Grid by the promoter pursuant to paragraphs 10 and 11 must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the promoter in writing.

## PART 3

### Protection for Operators of Electronic Communications Code Networks

1.—(1) For the protection of any operator, the following provisions will, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(a)</sup>;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

2. The exercise of the powers of **article 27** (statutory undertakers) are subject to Part 10 of Schedule 3A of the 2003 Act.

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

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(a) See section 106.

- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
  - (i) make reasonable compensation to an operator for loss sustained by it; and
  - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator will give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand will be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any dispute arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under **article 36** (arbitration).

4. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

5. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## SCHEDULE 9

Article 37

### Procedure for Discharge of Requirements

#### Applications made under requirements

1.—(1) Where an application has been made to a discharging authority for any agreement or approval required pursuant to requirements 9, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28 and 29 in Part 3 of **Schedule 1** (requirements) of this Order, the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2 (further information), eight weeks from the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under paragraph 2 (further information), eight weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

#### Further information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it must, within seven business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 5 business days of receipt of such a request.

(4) If the discharging authority does not give such notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter be entitled to request further information without the prior agreement of the undertaker.

## Appeals

3.—(1) The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 1;
- (c) on receipt of a request for further information pursuant to paragraph 2 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State, a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person; and
- (e) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above.

(3) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he or she must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.



(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within ten business days of that date.

(5) The appointed person may allow or dismiss the appeal.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

(7) The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Part 3 of **Schedule 1** (requirements) as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

#### **Interpretation of this Schedule**

4. In this Schedule—

“the appeal parties” means the discharging authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;

“discharging authority” means that person or body responsible for approving details pursuant to requirements 8, 14, 15, 12, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29 and 30, in Part 3 of **Schedule 1** (requirements);

“requirement consultee” means any body named in a requirement as a body to be consulted by the discharging authority in discharging that requirement.

## **SCHEDULE 10**

Article 30

### **Deemed Licence under the 2009 Act – Generation Assets**

#### **PART 1**

##### **Interpretation**

1. In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“2017 Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“authorised deposits” means the substances and articles specified in Part 2, paragraph 2(3) of this licence;

“authorised scheme” means Work No. 1 described in Part 2, paragraph 3 of this licence or any part of that work;

“biogenic reef mitigation and monitoring plan” means the document certified as the biogenic reef mitigation and monitoring plan by the Secretary of State for the purposes of this Order;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR buoys, wave buoys and guard buoys;

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means, in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for archaeological investigations, pre-construction surveys and monitoring and seabed preparation and clearance, and the words “commencement” and “commenced” will be construed accordingly;

“condition” means a condition in Part 4 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“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;

“draught height” means the distance between the lowest point of the rotating blade of the wind turbine generator and MHWS;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“European offshore marine site” has the meaning given in regulation 18 of the 2017 Regulations;

“European site” has the meaning given in regulation 27 of the 2017 Regulations;

“export” means the flow of electricity from a wind turbine generator or offshore substation into a distribution network or transmission system for Great Britain, and “export” also includes the conveying of, or importing of, electricity between the distribution network or transmission system for Great Britain and the wind turbine generator or offshore substation;

“fisheries liaison and co-existence plan” means the document certified as the Fisheries Liaison and Co-existence Plan by the Secretary of State for the purposes of this Order;

“HAT” means highest astronomical tide;

“jacket foundation” means a steel jacket lattice-type structure constructed of steel which is fixed to the seabed at two or more points with pin piles or suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access

platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four-legged jackets, or straight or battered leg jackets;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 2 of this licence;

“maintain” includes inspect, maintain, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any cable or any component part of any wind turbine generator, offshore substation, or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“monopile foundation” means a steel pile, typically cylindrical, driven or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore archaeological draft written scheme of investigation” means the document certified as the offshore archaeology draft written scheme of investigation by the Secretary of State for the purposes of this Order;

“offshore cables” means any Alternating Current (AC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in Part 2 paragraph 6 of this licence;

“offshore works plan” means the plan certified as the works plan (offshore) by the Secretary of State for the purposes of the Order;

“the Order” means the Thanet Extension Offshore Wind Farm Order 201X;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order and to the extent the definition of ‘maintain’ is used within the document it will have the same interpretation as ‘maintain’ for the purposes of this Order;

“outline site integrity plan” means the document certified as the outline site integrity plan by the Secretary of State for the purposes of the Order;

“pre-commencement works” means archaeological investigations, pre-construction surveys and monitoring and seabed preparation and clearance;

“principal contractor” has the same meaning as in section 2 of the Construction (Design and Management) Regulation 2015;

“relevant site” means a European offshore marine site and a European site;

“structures exclusion zone” means the area hatched green on the offshore works plan;

“statutory historic body” means the Historic Buildings and Monuments Commission for England;

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for fixity of the structure it supports;

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means Vattenfall Wind Power Ltd;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

2. A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

3. Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

4. Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Marine Licensing  
Lancaster House  
Hampshire Court  
Newcastle Business Park  
Newcastle upon Tyne  
NE4 7YH  
Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Marine Environment Team  
Fish Market  
Rock-A-Nore Road  
Hastings  
East Sussex  
TN34 3DW  
Tel: 01424 424 109;

- (c) Trinity House  
Tower Hill  
London  
EC3N 4DH  
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office  
Admiralty Way  
Taunton  
Somerset  
TA1 2DN  
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency  
Navigation Safety Branch  
Bay 2/20, Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG  
Tel: 020 3817 2433;
- (f) Centre for Environment, Fisheries and Aquaculture Science  
Pakefield Road  
Lowestoft  
Suffolk  
NR33 0HT  
Tel: 01502 562 244;
- (g) Natural England  
Area 1C, Nobel House  
17 Smith Square  
London  
SW1P 2AL  
Tel: 0300 060 4911;
- (h) Historic England  
4th Floor, Cannon Bridge House  
25 Dowgate Hill,  
London  
EC4R 2YA  
020 7973 3700

## PART 2

### Licensed Marine Activities – General

1. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

2. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

3. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

4. Any amendments to or variations from the approved plans, protocols or statements must demonstrate that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

5. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling or seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

6. The grid coordinates for the authorised scheme are specified below—

**Array Area**

<i>Point No</i>	<i>Latitude (DAS)</i>	<i>Longitude (DAS)</i>	<i>Point No</i>	<i>Latitude (DAS)</i>	<i>Longitude (DAS)</i>
1	51° 25' 33.041" N	1° 32' 30.523" E	8	51° 27' 38.815" N	1° 38' 7.249" E
2	51° 27' 40.652" N	1° 32' 53.134" E	9	51° 27' 38.873" N	1° 36' 4.331" E
3	51° 28' 13.973" N	1° 33' 56.681" E	10	51° 26' 34.609" N	1° 34' 10.445" E
4	51° 28' 19.898" N	1° 41' 47.085" E	11	51° 24' 9.695" N	1° 37' 39.727" E
5	51° 27' 7.350" N	1° 43' 30.472" E	12	51° 24' 3.060" N	1° 41' 16.044" E
6	51° 22' 44.323" N	1° 41' 30.864" E	13	51° 25' 27.649" N	1° 41' 16.429" E
7	51° 23' 2.085" N	1° 36' 6.194" E			

## PART 3

### Details of Licensed Marine Activities

#### Details of licensed marine activities

1.—(1) Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in paragraph 5 of Part 2 of this licence;
- (b) the construction of works in or over the sea and on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 20,782m<sup>3</sup> for drilled foundations or 288,000m<sup>3</sup> for seabed preparation for foundations of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works such as sandwave clearance, boulder clearance and pre-trenching and excavation of horizontal directional drilling exit pits at the site disposal reference issued by the MMO on behalf of Cefas within the extent of the Order limits seaward of MHWS, comprising—
  - (i) at site disposal reference TH153:
    - (aa) 9,813.5m<sup>3</sup> for drilled wind turbine generator foundations; and
    - (bb) 1,155m<sup>3</sup> for drilled meteorological mast foundations; or
    - (cc) 230,400m<sup>3</sup> for seabed preparation associated with wind turbine generator and meteorological mast foundations.
  - (ii) at site disposal reference TH154:
    - (aa) 9,813.5m<sup>3</sup> for drilled foundations; and
    - (bb) 1,155m<sup>3</sup> for drilled meteorological mast foundations; or
    - (cc) 57,600m<sup>3</sup> for seabed preparation associated for wind turbine generator and meteorological mast foundations

(2) The disposal of material for the meteorological mast must be placed in either disposal site disposal reference TH153 or TH154.

2.—(1) Such activities are authorised in relation to the construction, maintenance and operation of—

- (2) Work No. 1—
  - (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 340 MW comprising up to 34 wind turbine generators each fixed to the seabed by one or more of the following foundation types, monopiles, three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations fitted with rotating blades and situated within the area shown on the works plan and further comprising (b) to (d) below;
  - (b) up to one meteorological mast fixed to the seabed within the area shown on the works plan by an associated foundation (namely one or more of the following: monopoles, three legged jackets on either pin piles or suction caisson anchoring; four legged jackets on pin piles or suction caisson anchoring and their associated foundations);
  - (c) up to one Floating Lidar Device (FLD) and up to one wave buoy fixed to the seabed within the area shown on the works plan;
  - (d) a network of subsea inter-array cables and fibre optic cables within the area shown on the works plan between the wind turbine generators and between the wind turbine generators and Work No.2 including one or more cable crossings.

(3) In connection with such Work No. 1 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which would not give rise to any materially new or materially different environmental effects from those assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock or concrete mattresses, with or without frond devices;
- (c) the removal of material from the seabed required for the construction of Work No. 1 and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation; and
- (d) removal of static fishing equipment.

(4) In connection with Work No. 1, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction or maintenance of the authorised scheme;
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (c) such other works as may be necessary or expedient (excluding any works relating to unexploded ordnances) for the purpose of or in connection with the construction or use of the authorised development and which would not give rise to any materially new or materially different environmental effects from those in the environmental statement.

## PART 4

### Conditions

#### Design parameters

1.—(1) Subject to paragraph (3), wind turbine generators forming part of the authorised project must not—

- (a) exceed a height of 250 metres when measured from HAT to the tip of the vertical blade;
- (b) exceed a height of 140 metres to the height of the centreline of the generator shaft forming part of the hub when measured from HAT;
- (c) exceed a rotor diameter of 220 metres;
- (d) be less than 480 metres from the nearest wind turbine generator in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 716 metres from the nearest wind turbine generator in either direction which is in line with the approximate prevailing wind direction (downwind); and
- (e) have a draught height of less than 22 metres from MHWS.

(2) References to the location of a wind turbine generator in paragraph (1) above are references to the centre point of that turbine.

2.—(1) The total number of meteorological masts must not exceed one and the total number of Floating Lidar Devices must not exceed one.

- (2) Each meteorological mast must not exceed a height of 140 metres above HAT.
- (3) Each meteorological mast must not have more than one supporting foundation.

3.—(1) The total length of the cables including fibre optic cables and the volume of their cable protection must not exceed the following—



<i>Work</i>	<i>Length</i>	<i>Cable protection volume</i>
Work No. 1 (inter-array)	64 kilometres	34,750m <sup>3</sup>

(2) In relation to a wind turbine generator or meteorological mast, each jacket foundation must not have—

- (a) a width spacing between its legs at the level of the seabed which is more than 40 metres;
- (b) a pile diameter which is more than four metres in the case of pin piles or a suction caisson diameter which is more than 20 metres;
- (c) more than one pile per leg or more than one suction caisson per leg; and
- (d) more than four legs.

(3) In relation to a wind turbine generator or meteorological mast each monopile foundation forming part of the authorised development must not have a diameter which is more than ten metres.

4. The total amount of scour protection for the wind turbine generators and meteorological masts forming part of the authorised project must not exceed 1,151,917.3 m<sup>3</sup>.

5.—(1) None of the infrastructure listed in Work No.1 (a) to (c) may be installed within the structures exclusion zone, the coordinates of which are specified below—

#### **Structures Exclusion Zone**

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 28' 13.973" N	1° 33' 56.681" E
2	51° 28' 15.183" N	1° 35' 29.471" E
3	51° 27' 23.628" N	1° 33' 46.501" E
4	51° 24' 45.426" N	1° 33' 51.671" E
5	51° 23' 1.317" N	1° 36' 20.336" E
6	51° 23' 2.085" N	1° 36' 6.194" E
7	51° 25' 33.041" N	1° 32' 30.523" E
8	51° 27' 40.652" N	1° 32' 53.134" E

(2) No part of any wind turbine generator, including its blades, may oversail into the structures exclusion zone.

#### **Maintenance of the authorised development**

6.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise.

(2) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Maintenance works include but are not limited to—

- (a) major wind turbine component replacement;
- (b) painting wind turbine generators;
- (c) bird waste removal;
- (d) cable remedial burial;
- (e) array cable repairs;
- (f) access ladder replacement; and
- (g) wind turbine generator anode replacement.

(4) Where the MMO's approval is required under sub-paragraph (2), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is

unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(5) The undertaker must issue to operators of vessels under its control operating within the Order limits a code of good practice to prevent collision risk or injury to marine mammals.

(6) The undertaker must ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

### Notifications and inspections

7.—(1) The undertaker must ensure that—

(a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all principal contractors notified to the MMO in accordance with **condition 7(13)**; and

(ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 7(13)**;

(b) within 28 days of receipt of a copy of this licence those persons referred to in sub-paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 7(13)** are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The Kingfisher Information Service of Seafish must be notified electronically of details of the vessel routes, timings and locations relating to the construction of the authorised project or any part thereof—

(a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and

(b) as soon as reasonably practicable and no later than 24 hours of completion of all offshore activities.

(c) Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 1 (wind turbine generators or other offshore construction activities including array cables) and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 12(b)**. Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO. Copies of all notices must be provided to the MMO within 5 days.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office.

(12) In case of exposure of cables on or above the seabed, the undertaker must within five days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.

(13) The undertaker must provide to the MMO the name and function of any principal contractor appointed to engage in the licensed activities within seven days of appointment and any changes to the supplied details provided must be notified to the MMO in writing within seven days of appointment.

### **Aids to navigation**

**8.—**(1) The undertaker must during the whole period from commencement of construction of the licensed activities to the completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the commencement of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 13(1)(j)** using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the authorised project to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of **condition 7(12)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

**9.—**(1) Except as otherwise required by Trinity House the undertaker must paint all structures yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must paint the remainder of the structures (not painted yellow in accordance with sub-paragraph (1) above) submarine grey (colour code RAL 7035).

## Aviation safety

10. The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator, mast and platform to be constructed; and
- (e) the latitude and longitude of each wind turbine generator, mast and platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO within 28 days.

## Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings or treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within the site disposal reference issued by the MMO on behalf of Cefas within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it. Where reasonably practicable any rock material used will be similar to material naturally present in the location.

(8) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 13(d)(i)**.

(9) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if it is reasonable to do so.

### **Force majeure**

**12.—**(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

### **Pre-construction plans and documentation**

**13.—**(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

(2) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be approved in writing by the MMO in consultation with Trinity House, the MCA and Natural England which shows—

- (a) the proposed location and choice of foundation of all wind turbine generators (in accordance with the recommendations for layout contained in MGN543), and the meteorological masts;
- (b) the height to the tip of the vertical blade; height to the centreline of the generator shaft forming part of the hub;
- (c) rotor diameter and spacing of all wind turbine generators;
- (d) the height of all lattice towers forming part of the meteorological mast;
- (e) the length and arrangement of all cables (including fibre optic cables) comprising Work No. 1(d);
- (f) the dimensions of all jacket foundations;
- (g) the dimensions of all suction caissons;
- (h) the dimensions of all monopile foundations;
- (i) the exclusion zone as identified in the Biogenic Reef Mitigation Plan;  
to ensure conformity with the description of Work No. 1 and compliance with **conditions 1 to 4** above.

(3) A construction programme and monitoring plan to include details of—

- (a) the proposed construction start date;
- (b) proposed timings for mobilisation of plant delivery of materials and installation works;
- (c) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with subparagraph (1)(h) and conditions 16, 17 and 18;
- (d) an indicative written construction programme for all wind turbine generators, offshore substation, meteorological mast, buoys and cables comprised in the works at paragraph 1 of Part 3 (licensed activities) of this Schedule (insofar as not shown in paragraph (b) above); and
- (e) details of the works to be undertaken within the structures exclusion zone, including the location of cables; and

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

with details pursuant to paragraph (c) above to be submitted to the MMO in accordance with the following—

- (i) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
- (ii) at least four months prior to construction, detail on construction monitoring;
- (iii) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.

(4) A construction method statement in accordance with the construction methods and relevant parameters assessed in the environmental statement and including details of—

- (a) foundation installation methodology, including drilling methods and disposal of drill arisings and having regard to the biogenic reef mitigation plan;
- (b) soft start procedures with specified duration periods;
- (c) cable installation;
- (d) contractors;
- (e) the implementation of safety zones and their interaction with the structures exclusion zone; and
- (f) associated and ancillary works.

(5) A project environmental management plan covering the period of construction and operation to include details of—

- (a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
- (b) the appointment and responsibilities of a fisheries liaison officer;
- (c) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance; and
- (d) waste management and disposal arrangements.

(6) A scour and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which must be updated and resubmitted for approval if changes to it are proposed following cable laying operations. No activities proposed in any updated scour and cable protection plan may be undertaken until the updated plan has been approved by MMO.

(7) In the event that driven or part-driven pile foundations are proposed to be used a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies.

(8) A cable specification, installation and monitoring plan, to include—

- (a) technical specification of offshore cables (including fibre optic cables) below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
- (b) a detailed cable (including fibre optic cables) laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques (including cable protection); and
- (c) proposals for monitoring offshore cables (including fibre optic cables) including cable protection during the operational lifetime of the authorised scheme which includes a risk based approach to the management of unburied or shallow buried cables.

(9) An offshore written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean high water springs, which must be submitted four months prior to commencement of the licensed activities and must accord with the offshore archaeological draft written scheme of investigation and industry good practice, in consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
- (e) monitoring of archaeological exclusion zones during and post construction;
- (f) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online Access to the Index of archaeological investigations') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
- (g) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme;
- (h) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities; and
- (i) in the event that site investigation is required, details of an assessment of the significance and research questions raised by the results.

(10) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.

(11) An aids to navigation management plan to be approved in writing by the MMO following consultation with Trinity House, to include details of any ID lighting and details of how the undertaker will comply with the provisions of condition 8 for the lifetime of the authorised scheme.

(12) A site integrity plan, which must accord with the outline site integrity plan (as certified in accordance with article 35) and must be approved in writing by the MMO in consultation with Natural England—

- (a) four months in advance of any geophysical surveys being undertaken; and
- (b) a second time four months prior to the carrying out of the next relevant noisy activity.

(13) An offshore ornithological monitoring plan, in accordance with the in-principle offshore ornithological monitoring plan (as certified within **article 35**).

**14.—**(1) Pre-commencement and pre-construction archaeological investigations and material operations which involve intrusive seabed works must only take place in accordance with a specific offshore written scheme of investigation which—

- (a) has been properly informed by any necessary surveys as are required; and
- (b) has been submitted to and approved by the MMO accompanied by all relevant documentation that may be required

and that will be in accordance with the details set out in the offshore archaeological draft written scheme of investigation.

(2) Any pre-commencement works of an intrusive nature must not take place prior to the approval of the offshore written scheme of investigation submitted in accordance with sub-paragraph (1).

(3) Any archaeological reports produced in accordance with **condition 13** are to be approved by the MMO, in consultation with the relevant statutory historic bodies.

**15.—**(1) Each programme, statement, plan, protocol or scheme required to be approved under **conditions 13 and 14** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **conditions 13 and 14**.

(3) The licensed activities must be carried out in accordance with the plans, protocols, statements, schemes and details approved under **conditions 13 and 14**, unless otherwise agreed in writing by the MMO.

(4) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval to an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme. This must be in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”. In providing its approval, the MMO must confirm in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

#### **Pre-construction monitoring and surveys**

**16.—**(1) The undertaker must, in discharging **condition 13(b)**, submit details of a full sea floor coverage swath-bathymetry survey for written approval by the MMO in consultation with the relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and—

- (a) the survey proposals must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed by the MMO, are—

- (a) appropriate surveys to determine the location and extent of any biogenic reef features (*Sabellaria spinulosa*) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the biogenic reef mitigation plan;
- (b) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including an appropriate buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that buffer;

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation bodies.



## Construction monitoring

17.—(1) The undertaker must, in discharging **condition 13(b)**, submit details for approval by the MMO in consultation with Natural England of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives. The monitoring required is that for the measurements of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1), including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England.

(3) The results of the initial noise measurements monitored in accordance with sub-paragraph (1) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. The MMO may request that further monitoring is undertaken, unless otherwise agreed in writing with the undertaker. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different noise levels being generated to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed.

(4) Construction monitoring must include vessel traffic monitoring by automatic identification system for the duration of the construction period. A report must be submitted to the MMO, Trinity House and the MCA at the end of each year of the construction period.

## Post construction

18.—(1) The undertaker must, in discharging **condition 13(b)**, submit a full sea floor coverage swath-bathymetry survey for the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed with the MMO must include appropriate surveys (including ground-truthing of the bathymetry surveys required under **condition 16(2)(a)**) to determine the location and extent of any biogenic reef features (*Sabellaria spinulosa*) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the Biogenic Reef Mitigation Plan.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) for 1 year post-construction, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory bodies.

(4) Following installation of cables, the cable monitoring plan required under **condition 13(g)** must be updated with the results of the post installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed by the MMO.

(5) Post construction monitoring must include vessel traffic monitoring by automatic identification system for a duration of three years following the completion of construction of authorised scheme. A report must be submitted to the MMO, Trinity House and the MCA at the end of each year of the three year period.

### **Reporting of impact pile driving**

**19.**—(1) Only when driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the UK Marine Noise Registry—

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry’s Forward Look requirements;
- (b) every year by 25 March following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry’s Close Out requirements for any pile driving activities undertaken in the previous calendar year;
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry’s Close Out requirements.

(2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within seven days of the submission.

(3) For the purpose of this condition—

“Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;

“Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document.

### **Fisheries liaison and coexistence plan**

**20.** The undertaker must comply with the fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 7** and to address the interaction of the licensed activities with fishing activities.

### **Seabed preparation and clearance**

**21.** Pre-commencement works relating to seabed preparation and clearance must only take place in accordance with a method statement which—

- (a) has been properly informed by any necessary surveys as are required;
- (b) has been submitted to and approved by the MMO accompanied by all relevant documentation that may be required; and
- (c) which has regard to the Biogenic Reef Mitigation Plan and the offshore archaeological draft written scheme of investigation (which are the plans as certified in accordance with **article 35**).

### **Dredge disposal**

**22.**—(1) The licence holder must notify the MMO within 48 hours of the completion of the final authorised disposal at disposal site TH153, TH154 or TH155.

(2) Any man-made material, which is not deemed of archaeological interest by the reporting and recording protocols as set out in the offshore written scheme of archaeological investigation, must be separated from the dredged material and disposed of on land, where reasonably practical.

### **Decommissioning**

**23.**—(1) No decommissioning activities may commence until a plan for the carrying out of the activities has been submitted to and approved in writing by the MMO.

(2) The plan must be submitted for approval at least six months before the intended start of the decommissioning activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) The plan must be implemented as approved.

### **Pre-commencement works**

**24.**—(1) No pre-commencement works may be carried out until all details relevant to the pre-commencement works required by **Condition 13 and 21 in Schedule 10** of this Order have been submitted to and approved by the MMO.

(2) In addition to sub-section (1)—

(a) the undertaker may submit, and

(b) the MMO 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 (1) and (2) may be submitted separately and in advance of the details required to discharge the condition in advance of commencement.

(4) The details required pursuant to sub-sections (1) and (2) must be submitted at least four months prior to the commencement of licensed activities.

### **Seasonal restrictions in respect of fish spawning**

**25.**—(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.

### **Certified documents**

**26.**—(1) Subject to sub-paragraph (2) each programme, statement, plan, protocol or scheme listed in Schedule 12 of the Order (Documents to be certified under **Article 35**) which is submitted to the Secretary of State for certification pursuant to **Article 35** must be complied with as certified.

(2) Where the MMO is the discharging authority, it may approve an amendment or variation to the following documents certified under paragraph (1) provided such approval is not given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the MMO that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement: Offshore Archaeological Written Scheme of Investigation, Fishing Liaison and Coexistence Plan, Outline Offshore Operations and Maintenance Plan, Draft Marine Mammal Mitigation Protocol, In-principle Offshore Ornithology Monitoring Plan, Schedule of Mitigation, Shipping and Navigation Liaison Plan and the Outline Site Integrity Plan.

## Deemed Licence under the 2009 Act – Export Cable System

## PART 1

## Interpretation

## 1. In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“2017 Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“authorised deposits” means the substances and articles specified in Part 2, paragraph 2(3) of this licence;

“authorised scheme” means Work Nos. 2, 3, 3A and 3B described in paragraph 3 of this licence or any part of that work;

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, protective aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and archaeological investigations and site clearance, and seabed preparation and clearance (b) in respect of any other works comprised in the authorised project, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition of the sea wall, environmental surveys, investigations for the purpose of assessing ground conditions, diversion and laying of services, temporary structures or hard standing, and the words “commencement” and “commenced” will be construed accordingly;

“condition” means a condition in Part 4 of this licence;

“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;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“European offshore marine site” has the meaning given in regulation 15 of the 2017 Regulations;

“European site” has the meaning given in regulation 24 of the 2017 Regulations;

“export” means the flow of electricity from a wind turbine generator or offshore substation into a distribution network or transmission system for Great Britain, and “export” also includes the conveying of, or importing of, electricity between the distribution network or transmission system for Great Britain and the wind turbine generator or offshore substation;

“fisheries liaison and coexistence plan” means the document certified as the Fisheries Liaison and Co-existence Plan by the Secretary of State for the purposes of this Order;

“HAT” means highest astronomical tide;

“jacket foundation” means a steel jacket lattice-type structure constructed of steel which is fixed to the seabed at two or more points with pin piles or suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four-legged jackets, or straight or battered leg jackets;

“outline site integrity plan” means the document certified as the outline site integrity plan by the Secretary of State for the purposes of the Order;

“pre-commencement works” means archaeological investigations, pre-construction surveys and monitoring and seabed preparation and clearance;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 2 of this licence;

“maintain” includes inspect, maintain, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any cable or any component part of any offshore substation, or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“monopile foundation” means a steel pile, typically cylindrical, driven or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore archaeological draft written scheme of investigation” means the document certified as the offshore archaeological draft written scheme of investigation by the Secretary of State for the purposes of this Order;

“offshore cables” means any Alternating Current (AC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore substation” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform and, depending on the type of substation, low, medium and high voltage switch gear, or AC filters or AC/DC converter with switching devices;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in Part 2 paragraph 6 of this licence;

“offshore works plan” means the plan certified as the works plan (offshore) by the Secretary of State for the purposes of the Order;

“the Order” means the Thanet Extension Offshore Wind Farm Order 201X;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order and to the extent the definition of ‘maintain’ is used within the document it will have the same interpretation as ‘maintain’ for the purposes of this Order;

“principal contractor” has the same meaning as in section 2 of the Construction (Design and Management) Regulation 2015;

“relevant site” means a European offshore marine site and a European site;

“ringed plover mitigation plan” means the mitigation plan document to be produced prior to construction, in accordance with the principles contained within the Onshore Biodiversity chapter of the Environmental Statement;

“Saltmarsh Mitigation, Reinstatement and Monitoring Plan” means the document certified as the Saltmarsh Mitigation, Reinstatement and Monitoring Plan by the Secretary of State for the purposes of this Order;

“statutory historic body” means the Historic Buildings and Monuments Commission for England;

“structures exclusion zone” means the area hatched green on the offshore works plan;

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for fixity of the structure it supports;

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means Vattenfall Wind Power Ltd;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

2. A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

3. Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

4. Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

- (a) Marine Management Organisation  
Marine Licensing

- Lancaster House  
Hampshire Court  
Newcastle Business Park  
Newcastle upon Tyne  
NE4 7YH  
Tel: 0300 123 1032;
- (b) Marine Management Organisation (local office)  
Fish Market  
Rock-a-Nore Road  
Hastings  
East Sussex  
TN34 3DW  
Tel: 0142442410;
- (c) Trinity House  
Tower Hill  
London  
EC3N 4DH  
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office  
Admiralty Way  
Taunton  
Somerset  
TA1 2DN  
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency  
Navigation Safety Branch  
Bay 2/20, Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG  
Tel: 020 3817 2433;
- (f) Centre for Environment, Fisheries and Aquaculture Science  
Pakefield Road  
Lowestoft  
Suffolk  
NR33 0HT  
Tel: 01502 562 244;
- (g) Natural England  
Area 1C, Nobel House  
17 Smith Square  
London  
SW1P 2AL  
Tel: 0300 060 4911;

- (h) Historic England  
 4th Floor, Cannon Bridge House  
 25 Dowgate Hill,  
 London  
 EC4R 2YA  
 020 7973 3700

## PART 2

### Licensed Marine Activities - General

1. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

2. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

3. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

4. Any amendments to or variations from the approved plans, protocols or statements must demonstrate that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

5. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

6. The grid coordinates for the authorised scheme are specified below—

#### Current Cable Corridor

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 19' 22.104" N	1° 22' 19.234" E	25	51° 17' 56.042" N	1° 27' 8.120" E
2	51° 19' 24.560" N	1° 25' 18.600" E	26	51° 17' 58.278" N	1° 26' 14.982" E
3	51° 19' 38.342" N	1° 26' 20.851" E	27	51° 18' 46.821" N	1° 23' 12.172" E
4	51° 19' 36.695" N	1° 29' 9.324" E	28	51° 18' 52.541" N	1° 22' 57.260" E



5	51° 19' 43.095" N	1° 29' 43.272" E	29	51° 18' 52.380" N	1° 22' 16.747" E
6	51° 20' 14.158" N	1° 29' 56.342" E	30	51° 19' 5.968" N	1° 21' 41.601" E
7	51° 20' 37.339" N	1° 32' 25.827" E	31	51° 19' 6.137" N	1° 21' 41.660" E
8	51° 21' 43.399" N	1° 33' 16.785" E	32	51° 19' 7.241" N	1° 21' 41.937" E
9	51° 23' 14.222" N	1° 34' 45.212" E	33	51° 19' 8.626" N	1° 21' 42.154" E
10	51° 23' 56.937" N	1° 34' 47.892" E	34	51° 19' 10.154" N	1° 21' 42.190" E
11	51° 23' 22.059" N	1° 35' 37.689" E	35	51° 19' 10.485" N	1° 21' 42.234" E
12	51° 23' 7.263" N	1° 35' 36.158" E	36	51° 19' 10.812" N	1° 21' 42.364" E
13	51° 22' 46.107" N	1° 35' 21.177" E	37	51° 19' 11.135" N	1° 21' 42.594" E
14	51° 21' 27.502" N	1° 34' 2.352" E	38	51° 19' 12.534" N	1° 21' 44.013" E
15	51° 21' 15.621" N	1° 34' 0.605" E	39	51° 19' 12.994" N	1° 21' 44.441" E
16	51° 20' 34.127" N	1° 33' 19.312" E	40	51° 19' 12.995" N	1° 21' 44.448" E
17	51° 20' 18.448" N	1° 33' 21.294" E	41	51° 19' 18.092" N	1° 22' 2.648" E
18	51° 20' 8.251" N	1° 32' 54.654" E	42	51° 18' 25.807" N	1° 27' 42.379" E
19	51° 19' 48.474" N	1° 30' 48.676" E	43	51° 19' 5.515" N	1° 27' 38.768" E
20	51° 19' 41.109" N	1° 30' 36.146" E	44	51° 19' 6.818" N	1° 26' 4.122" E
21	51° 19' 17.641" N	1° 30' 27.963" E	45	51° 18' 53.151" N	1° 25' 40.946" E
22	51° 19' 3.953" N	1° 29' 13.879" E	46	51° 18' 38.800" N	1° 25' 25.266" E
23	51° 19' 4.793" N	1° 28' 30.568" E	47	51° 18' 22.978" N	1° 26' 25.434" E
24	51° 18' 2.205" N	1° 28' 36.240" E			

### PART 3

#### Details of Licensed Marine Activities

##### Details of licensed marine activities

1.—(1) Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in paragraph 5 of Part 2 of this licence;
- (b) the construction of works in or over the sea or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 1,449,600m<sup>3</sup> and 1,000m<sup>3</sup> of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works and cable installation and preparation (including fibre optic cables) such as sandwave clearance, boulder clearance and pre-trenching at the site disposal references issued by the MMO on behalf of Cefas within the extent of the Order limits seaward of MHWS, comprising—
  - (i) at site disposal reference TH153:
    - (aa) 360,000m<sup>3</sup> for sandwave clearance; and
    - (bb) 9,600m<sup>3</sup> for offshore substation foundations (dredging); or
    - (cc) 1,000m<sup>3</sup> for offshore substation foundations (drilling).
  - (ii) at site disposal reference TH154:
    - (aa) 60,000m<sup>3</sup> for sandwave clearance; and
    - (bb) 9,600m<sup>3</sup> for offshore substation foundations (dredging); or
    - (cc) 1,000m<sup>3</sup> for offshore substation foundations (drilling).
  - (iii) At site disposal reference TH155:
    - (aa) 720,000m<sup>3</sup> for sandwave clearance.

(2) The disposal of material for the offshore substation must be placed in either disposal site disposal reference TH153 or TH154.

2. Such activities are authorised in relation to the construction, maintenance and operation of—

(1) *Work No. 2*—An offshore substation fixed to the seabed within the area shown on the works plan by associated foundation[s], namely one of the following: monopile, or jacket foundation on either pin piles or suction caisson anchoring.

(2) *Work No. 3*— Up to four offshore subsea export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore along routes within the Order Limits seaward of MLWS including one or more cable crossings as shown and demarcated on the works plan.

(3) *Work No. 3A*— Up to four subsea export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore between Work No 3 and 3B seaward of MHWS at Pegwell Bay and where required works to facilitate horizontal directional drilling.

(4) *Work No. 3B*—

- (a) In the event that the transition joint bays are located below ground within Pegwell Bay County Park (Work No. 4A) and export cables are required to cross the seawall by horizontal directional drilling, onshore connection works, including up to four export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore; and
- (b) In the event that the export cables cross the seawall by trenching, onshore connection works consisting of—
  - (i) up to four export cables and fibre optic cables to export electricity and transmit electronic communications from the offshore substation or wind farm array to the shore;
  - (ii) a temporary cofferdam to facilitate the installation of cables through the sea wall; and

- (iii) partial demolition of the sea wall and subsequent reinstatement of the sea wall on its existing alignment.

(5) All such works must be constructed, maintained and operated as shown and demarcated on the works plans.

(6) In connection with such Work Nos. 2, 3, 3A and 3B and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which would not give rise to any materially new or materially different environmental effects from those assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock or concrete mattresses, with or without frond devices;
- (c) temporary landing places, moorings or other means of accommodating vessels in the construction or maintenance of the authorised scheme;
- (d) marking buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (e) temporary works below MHWS for the benefit or protection of land or structures affected by the authorised development;
- (f) removal of static fishing equipment; and
- (g) such other works as may be necessary or expedient (excluding any works relating to unexploded ordnances) for the purpose of or in connection with the construction or use of the authorised development and which would not give rise to any materially new or materially different environmental effects from those recorded in the environmental statement.

## PART 4

### Conditions

#### Design parameters

1.—(1) The total number of offshore substations forming part of the authorised scheme must not exceed one.

(2) The offshore substation described in sub-paragraph (1) must not be placed within the area identified on the offshore works plan as the structures exclusion zone.

(3) The dimensions of any offshore substation forming part of the authorised project (excluding towers, helipads, masts and cranes) must not exceed 55 metres in height when measured from HAT, 70 metres in length and 50 metres in width.

(4) In relation to an offshore substation, each jacket foundation must not have—

- (a) a width spacing between its legs at the level of the seabed which is more than 40 metres;
- (b) more than one pile per leg or more than one suction caisson per leg.

2. The total length of the cables including fibre optic cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection volume</i>
Work No. 1 (export cable)	120 kilometres	145,000m <sup>3</sup>

3. The total amount of scour protection for the offshore substation, forming part of the authorised project must not exceed 39,269.9 m<sup>3</sup>

4. None of the infrastructure listed in Work No.(2), nor Ancillary Works (a), (c) and (d) are to be installed within the structures exclusion zone, whose coordinates are specified below—

**Structures Exclusion Zone**

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 28' 13.973" N	1° 33' 56.681" E
2	51° 28' 15.183" N	1° 35' 29.471" E
3	51° 27' 23.628" N	1° 33' 46.501" E
4	51° 24' 45.426" N	1° 33' 51.671" E
5	51° 23' 1.317" N	1° 36' 20.336" E
6	51° 23' 2.085" N	1° 36' 6.194" E
7	51° 25' 33.041" N	1° 32' 30.523" E
8	51° 27' 40.652" N	1° 32' 53.134" E

**Maintenance of the authorised development**

5.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise.

(2) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Maintenance works include but are not limited to—

- (a) offshore substation component replacement;
- (b) painting offshore substation;
- (c) bird waste removal;
- (d) export cable remedial burial;
- (e) export cable repairs;
- (f) access ladder replacement; and
- (g) substation anode replacement.

(4) Where the MMO’s approval is required under paragraph (2), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(5) The undertaker must issue to operators of vessels under its control operating within the Order limits a code of good practice to prevent collision risk or injury to marine mammals.

(6) The undertaker must ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

**Notifications and inspections**

6.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
  - (i) all principal contractors notified to the MMO in accordance with **condition 6(13)**; and
  - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 6(13)**;

(b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 6(13)** are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) Kingfisher Information Service of Seafish must be notified electronically of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

(a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and

(b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 2 and the expected vessel routes from the construction ports to the relevant location. A second notice to mariners must be issued advising of the start date of Work Nos. 3, 3A and 3B and the route of the sub-sea cables. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 11(c)**. Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO. Copies of all notices must be provided to the MMO within 5 days.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, Trinity House and the UK Hydrographic Office.

(12) In case of exposure of cables on or above the seabed, the undertaker must within five days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.

(13) The undertaker must provide to the MMO the name and function of any principal contractor appointed to engage in the licensed activities within seven days of appointment and any changes to the supplied details provided must be notified to the MMO in writing within seven days of appointment.

### **Aids to navigation**

7.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the commencement of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 11(k)** using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of **condition 9(11)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

8.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must paint the remainder of the structures (not painted yellow in accordance with sub-paragraph (1) above) submarine grey (colour code RAL 7035).

### **Chemicals, drilling and debris**

9.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within site disposal reference issued by the MMO on behalf of Cefas within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it. Where reasonably practicable any rock material used will be similar to material naturally present in the location.

(8) The undertaker must undertake the survey agreed under **condition 11(9)(c)** following the swath-bathymetry survey referred to in **condition 14(2)(c)**. Should any such obstructions resulting from burial of Work No. 3 (export cables) be identified which, in the reasonable opinion of the MMO, may be considered to interfere with fishing, the undertaker must take such steps to remove them as the MMO in its reasonable opinion may require.

(9) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(10) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 11(5)(a)**.

(11) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

### **Force majeure**

**10.—**(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

### **Pre-construction plans and documentation**

**11.—**(1) The licensed activities or any part of those activities within Work Nos. 3A and 4B apart from horizontal directional drilling works and the temporary extension to the sea wall and the temporary cofferdam within Work No. 3B must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

(2) A contamination prevention plan which must contain details of necessary measures in order to ensure that construction works undertaken within Work No. 3B will not release any contaminants into the marine environment.

(3) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be approved in writing by the MMO in consultation with Trinity House, the MCA and Natural England which shows—

- (a) the proposed location and choice of foundation of the offshore substation;
- (b) the height, length and width of the offshore substation;

- (c) the length and arrangement of all cables and fibre optic cables comprising Work Nos. 3, 3A and 3B;
  - (d) the dimensions of all jacket foundations;
  - (e) the proposed layout of the offshore substations including any exclusion zones identified under sub-paragraph (g);
  - (f) a plan showing the indicative layout of all offshore substations including all exclusion zones (insofar as not shown in (e) above) and showing the indicative programming of particular works as set out in the indicative programme to be provided under sub-paragraph (c); and
  - (g) any exclusion zones/micrositing requirements identified in the biogenic reef mitigation plan.
  - (h) to ensure conformity with the description of Works Nos. 2, 3, 3A and 3B and compliance with conditions 1 to 4 above.
- (4) A construction programme and monitoring plan to include details of—
- (a) the proposed construction start date;
  - (b) proposed timings for mobilisation of plant delivery of materials and installation works having due regard to seasonal restrictions as assessed within the ES;
  - (c) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph (a) and conditions 14, 15 and 16; and
  - (d) an indicative written construction programme for the offshore substations and cables comprised in the works at paragraph 3(1) to (3) of Part 3 (licensed activities) of this Schedule (insofar as not shown in paragraph (ii) above);
  - (e) with details pursuant to paragraph (c) above to be submitted to the MMO in accordance with the following—
    - (i) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
    - (ii) at least four months prior to construction, detail on construction monitoring;
    - (iii) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;
 unless otherwise agreed in writing with the MMO.
- (5) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
- (a) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works and having regard to the Biogenic Reef Mitigation Plan;
  - (b) soft start procedures with specified duration periods;
  - (c) offshore substation location and installation, including scour protection;
  - (d) cable installation, including cable landfall and cable protection;
  - (e) contractors;
  - (f) vessels and vessels transit corridors, which minimises disturbance to red throated divers; and
  - (g) associated and ancillary works.
- (6) A project environmental management plan covering the period of construction and operation to include details of—
- (a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
  - (b) the appointment and responsibilities of a fisheries liaison officer;



- (c) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance; and
- (d) waste management and disposal arrangements.

(7) A scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.

(8) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies.

(9) A cable specification, installation and monitoring plan, to include—

- (a) technical specification of offshore cables (including fibre optic cables) below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice, and with the relevant provisions of the saltmarsh mitigation, reinstatement and monitoring plan;
- (b) a detailed cable (including fibre optic cables) laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques, including cable protection, in accordance with the relevant provisions of the saltmarsh mitigation, reinstatement and monitoring plan;
- (c) 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; and
- (d) proposals for monitoring offshore cables (including fibre optic cables) including cable protection during the operational lifetime of the authorised scheme which includes a risk based approach to the management of unburied or shallow buried cables.

(10) An offshore written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean high water, which must be submitted four months prior to commencement of the licensed activities and must accord with the offshore archaeological written scheme of investigation and industry good practice, in consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
- (e) monitoring of archaeological exclusion zones during and post construction;
- (f) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online Access to the Index of archaeological investigations) form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
- (g) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme;
- (h) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order

Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities; and

- (i) in the event that site investigation is required, details of an assessment of the significance and research questions raised by the results.

(11) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.

(12) An aids to navigation management plan to be approved in writing by the MMO following consultation with Trinity House, to include details of any ID lighting and details of how the undertaker will comply with the provisions of condition 7 for the lifetime of the authorised scheme.

(13) A site integrity plan, which must accord with the outline site integrity plan (as certified in accordance with article 35) and be approved in writing by the MMO in consultation with Natural England—

- (a) four months in advance of any geophysical surveys being undertaken; and
- (b) a second time four months prior to the carrying out of the next relevant noisy activity.

(14) In the event that the surveys carried out in accordance with condition 15(2)(e) find that ringed plover are present within the Order limits, a ringed plover mitigation plan, the intention of which is to prevent disturbance to ringed plover, following current best practice as advised by Natural England.

**12.—**(1) Pre-commencement and pre-construction archaeological investigations and material operations which involve intrusive seabed works must only take place in accordance with a specific offshore written scheme of investigation which—

- (a) has been properly informed by any necessary surveys as are required; and
- (b) has been submitted to and approved by the MMO accompanied by all relevant documentation that may be required

and that will be in accordance with the details set out in the offshore archaeological draft written scheme of investigation.

(2) Any pre-commencement works of an intrusive nature must not take place prior to the approval of the offshore written scheme of investigation submitted in accordance with subparagraph (1).

(3) Any archaeological reports produced in accordance with **condition 11(9)(f)** are to be agreed by the MMO, in consultation with the relevant statutory historic bodies.

**13.—**(1) Each programme, statement, plan, protocol or scheme required to be approved under **conditions 11 and 12** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **conditions 11 and 12**.

(3) The licensed activities must be carried out in accordance with the plans, protocols, statements, schemes and details approved under **conditions 11 and 12** unless otherwise agreed in writing by the MMO.

(4) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval to an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme. This must be in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”. In providing its approval the MMO must confirm in writing that the undertaker

has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

**14.**—(1) Each programme, statement, plan, protocol or scheme required to be approved relating to Work Nos. 3A and 3B may, where required, be approved by more than one statutory body in whole or in part.

(2) If all or any part of any document referred to in sub-paragraph (1) requires approval by more than one discharging authority, those discharging authorities will consult with one another prior to giving their requisite approvals in accordance with the provisions of this Order.

### **Pre-construction monitoring and surveys**

**15.**—(1) The undertaker must, in discharging **condition 11(4)**, submit details of a full sea floor coverage swath-bathymetry survey for written approval by the MMO in consultation with relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and—

- (a) the survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed by the MMO, are—

- (a) appropriate surveys to determine the location and extent of any biogenic reef features (*Sabellaria spinulosa*) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the Biogenic Reef Mitigation Plan;
- (b) In the event—
  - (i) cable protection is to be installed within the Goodwin Sands MCZ in accordance with condition 11(2), ground truthing of the geophysical surveys carried out in accordance with sub-paragraph (c), using drop down video and to be focussed on the areas where cable protection is to be installed to monitor epifaunal communities and inundation by sand;
  - (ii) sandwave clearance is required within the Goodwin Sands MCZ, interpreted geophysical monitoring to monitor changes in sediment type;
- (c) appropriate surveys in order to monitor the impact of development authorised by the Order within any areas of saltmarsh, as provided for in the Saltmarsh Mitigation, Reinstatement and Monitoring Plan;
- (d) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including an appropriate buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that buffer;
- (e) appropriate surveys to determine the location or presence of ringed plover inside the area(s) within the Order limits in which it is proposed to carry out construction works, which will inform the need for a ringed plover mitigation plan.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with Natural England.

## Construction monitoring

16.—(1) The undertaker must, in discharging **condition 11(4)**, submit details for approval by the MMO in consultation with Natural England of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives. The monitoring required is that for the measurement of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1) including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England.

(3) The results of the initial noise measurements monitored in accordance with sub-paragraph (1) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. The MMO may request that further monitoring is undertaken, unless otherwise agreed in writing with the undertaker. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different noise levels being generated to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed.

## Post construction

17.—(1) The undertaker must, in discharging **condition 11(4)**, submit details of a full sea floor coverage swath-bathymetry survey for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed with the MMO, are—

- (a) appropriate surveys (including ground-truthing of the bathymetry surveys required under **Condition 15(2)(d)**) to determine the location and extent of any biogenic reef features (*Sabellaria spinulosa*) inside the area(s) within the Order limits in which it is proposed to carry out construction works, as provided for in the Biogenic Reef Mitigation Plan;
- (b) In the event—
  - (i) cable protection has been installed within the Goodwin Sands MCZ, ground truthing of the geophysical surveys carried out in accordance with sub-paragraph (2)(d), using drop down video and to be focussed on the areas where cable protection has been installed to monitor epifaunal communities and inundation by sand;
  - (ii) sandwave clearance is required within the Goodwin Sands MCZ, interpreted geophysical monitoring to monitor changes in sediment type;
- (c) appropriate surveys in order to monitor the impact of development authorised by the Order within any areas of saltmarsh, as provided for in the Saltmarsh Mitigation, Reinstatement and Monitoring Plan;
- (d) within twelve months of completion of the licensed activities, one full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (2)(c) and (2)(d) for up to 3 years post-construction, which could be non-consecutive years, and provide the agreed

reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(4) Following installation of cables, the cable monitoring plan required under **condition 11(h)** must be updated with the results of the post installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed by the MMO.

(5) In the event that cable protection or sandwave clearance is installed within the Goodwin Sands MCZ, the undertaker must conduct epifaunal monitoring and carry out ground truthed geophysical surveys for a total period of three years, which is capable of being undertaken continuously or in one or more stages.

### **Seasonal restriction in respect of non-breeding waterbirds**

**18.**—(1) The undertaker must ensure that no percussive piling activity takes place within Work Nos 3A and 3B between 1st October to 31st March (inclusive) of any year.

(2) The undertaker must ensure that no construction works or planned operation and maintenance works take place within Work Nos. 3A and 3B between 1st October to 31st March (inclusive) of any year.

### **Reporting of impact pile driving**

**19.**—(1) Only when driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the UK Marine Noise Registry—

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;
- (b) every year by 25 March following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements for any pile driving activities undertaken in the previous calendar year;
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements

(2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within seven days of the submission.

(3) For the purpose of this condition—

“Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;

“Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document.

### **Notification of Work No. 3B**

**20.** No part of Work No. 3B may commence until a notification is provided in writing to the MMO confirming which one option of Work No. 3B(a) or 3B(b) will be constructed. The notification must include the anticipated timing of the proposed works being undertaken.

### **Cable exclusion zone**

**21.**—(1) No cable installation or cable protection works may take place within the cable exclusion zone as demarcated in the offshore works plan.

(2) The grid coordinates for the cable exclusion zone are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 19' 41.336" N	1° 29' 33.940" E	8	51° 19' 22.637" N	1° 24' 55.430" E
2	51° 19' 28.757" N	1° 29' 34.210" E	9	51° 19' 24.186" N	1° 24' 50.925" E
3	51° 19' 28.757" N	1° 27' 16.659" E	10	51° 19' 24.560" N	1° 25' 18.600" E
4	51° 19' 26.656" N	1° 27' 16.644" E	11	51° 19' 38.342" N	1° 26' 20.851" E
5	51° 19' 22.807" N	1° 27' 10.612" E	12	51° 19' 36.695" N	1° 29' 9.324" E
6	51° 19' 22.993" N	1° 25' 23.440" E			
7	51° 19' 22.464" N	1° 25' 20.184" E			

### **Fisheries liaison and coexistence plan**

**22.** The undertaker must comply with the fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 6** and to address the interaction of the licensed activities with fishing activities.

### **Seabed preparation and clearance**

**23.** Pre-commencement works relating to seabed preparation and clearance must only take place in accordance with a method statement which—

- (a) has been properly informed by any necessary surveys as are required;
- (b) has been submitted to and approved by the MMO accompanied by all relevant documentation that may be required; and
- (c) and which has regard to the Biogenic Reef Mitigation Plan and the offshore archaeological draft written scheme of investigation (which are the plans as certified in accordance with **article 35**).

### **Dredge disposal**

**24.**—(1) The licence holder must notify the MMO within 48 hours of the completion of the final authorised disposal at disposal site reference TH153 or TH154.

(2) Any man-made material, which is not deemed of archaeological interest by the reporting and recording protocols as set out in the offshore written scheme of archaeological investigation, must be separated from the dredged material and disposed of on land, where reasonably practical.

### **Aviation safety**

**25.** The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator, mast and platform to be constructed; and

- (e) the latitude and longitude of each wind turbine generator, mast and platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO.

### **Decommissioning**

**26.—**(1) No decommissioning activities may commence until a plan for the carrying out of the activities has been submitted to and approved in writing by the MMO.

(2) The plan must be submitted for approval at least six months before the intended start of the decommissioning activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) The plan must be implemented as approved.

### **Pre-commencement works**

**27.—**(1) No pre-commencement works may be carried out until all details relevant to the pre-commencement works required by **Conditions 11 and 23 in Schedule 11** of this Order have been submitted to and approved by the MMO.

(2) In addition to sub-section (1)—

- (a) the undertaker may submit, and
- (b) the MMO 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 (1) and (2) may be submitted separately and in advance of the details required to discharge the condition in advance of commencement.

(4) The details required pursuant to sub-sections (1) and (2) must be submitted at least four months prior to the commencement of licenced activities.

### **Seasonal restrictions in respect of fish spawning**

**28.—**(1) Subject to sub-section 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.

### **Certified documents**

**29.—**(1) Subject to paragraph (2) each programme, statement, plan, protocol or scheme listed in Schedule 12 of the Order (Documents to be certified under **Article 35**) which is submitted to the Secretary of State for certification pursuant to **Article 35** must be complied with as certified.

(2) Where the MMO is the discharging authority, it may approve an amendment or variation to the following documents certified under paragraph (1) provided such approval is not given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the MMO that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the

Environmental Statement: Offshore Archaeological Written Scheme of Investigation, Fishing Liaison and Coexistence Plan, Outline Offshore Operations and Maintenance Plan, Draft Marine Mammal Mitigation Protocol, In-principle Offshore Ornithology Monitoring Plan, Shipping and Navigation Liaison Plan, Schedule of Mitigation, Saltmarsh Mitigation, Reinstatement and Monitoring Plan and the Outline Site Integrity Plan.

## SCHEDULE 12

Article 35

### Documents to be Certified

#### PART 1

#### Documents forming the environmental statement to be certified

<i>Application Document No.</i>	<i>Document Description</i>	<i>Version</i>	<i>Date</i>
6	Environmental Statement (Volumes 1, 2, 3, 4 and 5)	N/A	June 2018
D3_29	Onshore Historic Environment Addendum (PINs Ref REP3-029)	N/A	March 2019
D5_39	Navigation Risk Assessment Addendum (PINS Ref REP5-039)	B	April 2019
D4B_10	An addendum to the Environmental Statement (ES) assessing the SEZ proposal (PINS Ref REP4B-010)	N/A	April 2019
D4B_11	Implications of the SEZ – Seascape, Landscape and Visual Effects (PINS Ref REP4B-011)	N/A	April 2019
D4B_12	Implications of the SEZ – Seascape, Landscape and Visual Effects – Wirelines (PINS Ref REP4B-012)	N/A	April 2019
D4B_13	Structure Exclusion Zone, Onshore Heritage (PINS Ref REP4B-013)	N/A	April 2019
D4B_14	Assessment of the implications of the implementation of the Structures Exclusion Zone in relation to commercial fisheries	N/A	April 2019



D2_36	(PINS Ref REP4B-014) Review of the Environment Statement following the removal of the Option 2 landfall design (PINS Ref REP2-036)	N/A	February 2019
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## PART 2

### Other documents to be certified

<i>Application Document No.</i>	<i>Document Description</i>	<i>Version</i>	<i>Date</i>
2.2	Land Plans (Offshore)	B	January 2019
2.3	Land Plans (Onshore)	D	February 2019
2.4	Special Category Land Plan	C	January 2019
2.5	Works Plan (Offshore)	D	June 2019
2.6	Works Plan (Onshore)	B	January 2019
2.7	Access Plan	N/A	June 2018
2.8	Temporary Stopping Up of Public Rights of Way Plan	N/A	June 2018
4.3	Book of Reference	C	February 2019
8.1	Code of Construction Practice	N/A	June 2018
8.3	Schedule of Mitigation	D	May 2019
8.4	Outline Access Management Strategy	N/A	June 2018
8.6	Offshore Archaeological Written Scheme of Investigation	C	March 2019
8.7	Outline Landscape and Ecological Management Plan	B	January 2019
8.8	Fisheries Liaison and Coexistence Plan	B	March 2019
8.10	Outline Offshore Operations and Maintenance Plan	B	March 2019
8.11	Draft Marine Mammal Mitigation Protocol	N/A	June 2018
8.13	Saltmarsh Mitigation, Reinstatement and Monitoring Plan	C	March 2019
8.15	Biogenic Reef Mitigation Plan	C	March 2019

8.16	Design and Access Statement	B	April 2019
D3_38	In-principle Offshore Ornithology Monitoring Plan	N/A	March 2019
D3_48	Schedule of Monitoring	B	April 2019
D4_6	Onshore Archaeology - Written Scheme Of Investigation	D	April 2019
D4_18	Outline Site Integrity Plan	B	March 2019
N/A	Shipping and Navigation Liaison Plan	A	June 2019

### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Vattenfall Wind Power Ltd to construct, operate and maintain a generating station located approximately 8km from the coast of Thanet, Kent, together with all necessary and associated development. For the purposes of the development that it authorises Vattenfall Wind Power Ltd is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the generating station and associated development. The deemed marine licences impose conditions in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with **article 35** (certification of plans, etc.) of this Order may be inspected free of charge at the offices of Thanet District Council at Cecil Street, Margate, CX9 1XZ.

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