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To all Interested Parties

By email

Your Ref:

Our Ref: EN010036

Date: 24 April 2012

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Dear Sir/Madam,

**Application for Kentish Flats Wind Farm Extension – Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010:**

- **Notice of Hearings under Rule 13**
- **Examining Authority's Requests for Further Information and Written Comments under Rule 17**

I attach as Annex A notice of Issue-specific and Open-floor hearings. Interested parties who provide advance notice of their wish to do so can at each Issue-specific and Open-floor hearing (subject to the Examining Authority's powers of control over the conduct of the hearing) make oral representations about the application.

Interested parties wishing to attend any of the Issue-specific and/or Open-floor hearings must inform the Planning Inspectorate by **17:00 on Friday 19<sup>th</sup> May 2012** indicating:

- i) which session(s) they wish to attend,
- ii) if they wish to speak at the hearing.

Those who wish to speak must provide a summary in writing of the matters they wish to raise, marked for the attention of the Case Manager, Simone Wilding and specifying their interested party reference number, also by **17:00 on Friday 19<sup>th</sup> May 2012**. In doing so please advise us of any special need you may have (eg disabled access, hearing loop etc) so that we can make appropriate arrangements where practicable.

I also attach as Annex B the Examining Authority's Requests for further information and written comments issued under rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (Examination Rules).

Responses are to be received by the Examining Authority by **17:00 on 11 May 2012**. The Examining Authority will take all responses received by this date into account including those where Interested Parties have chosen to address requests not directed to them. Responses will be published on the National Infrastructure pages of the Planning Portal as soon as practicable after the 11 May 2012.

Yours sincerely

*Glyn Roberts*  
**Examining Authority**

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Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

## Annex A

### Proposed Kentish Flats Wind Farm Extension – Kent (EN010036)

#### Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 13(3) Notice of Hearings

Please be advised that the Examining Authority will be holding the following Issue-specific hearings under section 91 of the Planning Act 2008 (PA2008) as amended on the following dates at the Marine Hotel, 33a Marine Parade, Tankerton, Whitstable, CT5 2BE:

<b>Date</b>	<b>Time</b>	<b>Issue</b>
30 May 2012	Registration 9:30 Start 10:00	Development Consent Order (DCO), requirements, related Local Impact Report matters and Deemed Marine License
30 May 2012	Registration 13:30 Start 14:00	Biological environment, ecology and fishing
31 May 2012	Registration 9:30 Start 10:00	Habitats Regulations aspects and information to support the Appropriate Assessment
31 May 2012	Registration 13:30 Start 14:00	Radar effects and damage to property around cable landfall and transition pit
12 June 2012	Registration 13:30 Start 14:00	Development Consent Order (DCO), requirements and related Local Impact Report matters

An **Open Floor Hearing** under s93 of PA2008 will be held on **Tuesday 12 June 2012** at 10:00 (registration 9:30am) at the Marine Hotel, 33a Marine Parade, Tankerton, Whitstable, CT5 2BE.

**Wednesday 13 June 2012** has been reserved for any additional hearings that may be required.

## **Annex B**

### **Proposed Kentish Flats Wind Farm Extension – Kent (EN010036)**

#### **Rule 17 Examination Rules - Request for Further Information and Written Comments**

The following questions seek additional information or clarification under Rule 17 of the Examination Rules. The questions are generally organised into groups directed to particular parties arranged in alphabetical order. Notwithstanding this point **all** parties are advised to read **all** questions. Some questions are directed to more than one party or may be relevant to the interests of parties who have not been directly requested by the Examining Authority to respond. Parties may respond at their discretion to any of the listed questions should they wish to do so, but the ExA has specifically identified parties from whom he wishes to hear in relation to the listed questions.

It is important to note that if responses are not received by the 11 May 2012 the Examining Authority may disregard them<sup>1</sup>.

Responses will be published on the National Infrastructure pages of the Planning Portal website as soon as practicable after the 11 May 2012.

#### **R17 – 1: To the Applicant – Archaeological mitigation**

In its recent written submission English Heritage has stated in relation to mitigation:

Mitigation – *'prevention and avoidance of impacts will be instigated through the design of the project, utilising Archaeological Exclusion Zones (AEZs)*. Can the applicant please clarify and confirm how the AEZs are to be given legal effect within the DCO/DML?

#### **R17 – 2: To the Applicant – Archiving**

Can the applicant please clarify and confirm how English Heritage's requirement for archiving of archaeological information in the OASIS system is to be addressed via the wording of the DCO/DML?

#### **R17 – 3: To the Applicant – Arbitration**

The applicant is putting forward arbitration as a dispute resolution process within the DCO provisions. Access to information and justice at a reasonable cost is a principle adopted in the Aarhus Convention. Can the applicant consider the points raised by the Hampton Pier Yacht Club regarding the practicability of community bodies or individuals (including the Yacht Club) engaging in a meaningful dispute arbitration process if the parties involved were required to bear the relevant costs of such a process? Can the applicant demonstrate that access to such an arbitration process could be achieved at reasonable cost to any of the parties that might be involved?

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<sup>1</sup> Rule 10(8) Rule 13(2)

#### **R17 - 4: To the Applicant – Draft DCO Amendments**

For convenience of reference by the Examining Authority (ExA) and all parties can the applicant please submit in electronic editable format a 'track changed' version of the DCO highlighting where changes have been made to date in the light of the various questions, suggestions and written submissions during the examination to date together with a copy of the amended drawings?

#### **R17 – 5: To the Applicant – Fish and Fishing**

The Marine Management Organisation's response to the ExA's written questions has referred the Examining Authority to the Kent and Essex Inshore Fisheries and Conservation Authority for information regarding inshore fishing in the Thames Estuary. The KEIFCA is not a statutory party to the examination and is not one of the statutory bodies named in the relevant procedural regulations. In relation to inshore fishing can the applicant consult with the KEIFCA and ask the Authority to provide the ExA with responses to the following questions a)-o)?

##### ***Fishing impacts including different types of trawling and dredging.***

- a) Can the authority provide evidence that would confirm the number of inshore fishing boats without AIS (under 30ft in length) operating in the Authority's area?
- b) Can the authority indicate its view as to how many of these are likely to operate inshore fishing in the area of the proposed Kentish Flats Wind Farm Extension?
- c) Can the authority provide any data and/or informed opinion regarding the types and weight of catch of particular species that these boats are likely to land and during what months of the year they are likely to fish in the area proposed for the wind farm extension?
- d) Can the authority provide any evidence or informed opinion regarding the effects of the existing Kentish Flats Wind Farm on the number of boats operating in that area, on the types of fishing undertaken in that area and on the weight of catch for particular species reported or otherwise confirmed from that area.
- e) Does the authority wish to provide evidence or an informed opinion regarding the likely effects of the Kentish Flats extension on fish, shellfish, fishing and the incomes of fishermen during the periods of construction, operation and decommissioning of the wind farm extension? If so please provide a clear explanation referring to supporting evidence where available.
- f) Does the authority wish to draw the Examining Authority's attention to any cumulative effects upon fish, fishing and the incomes of fishermen of projects that are constructed and operational, under construction and planned? If so please provide a clear explanation referring to supporting evidence where available. It would be helpful if the authority is able to confirm and if possible evidence its view of the likely impacts of the proposed development (in isolation or cumulatively with other projects) upon Cockle and Oyster harvesting, Herring spawning and nursery grounds and any impacts anticipated in relation to Thornback Rays and issues such as starfish infestation.

- g) It would be helpful if any comments regarding fishing impacts could differentiate between impacts regarding the different types of trawling and dredging. It would also be helpful to understand the split of fishing in the area (e.g. by number of boats, type and frequency of catches etc) between larger boats over 30 feet length that would normally be equipped with AIS and local boats of under 30 feet that may not be equipped with AIS, including fishing by small local vessels. Also is there any difference in the likely location of fishing activity by boats of different types and sizes? Which are more likely to fish frequently in the Kentish Flats Extension area?
- h) It is noted that some concerns have been expressed over potential for sediment contamination of oyster meat during construction (and presumably during decommissioning and any maintenance or repair works disturbing sediment). Can the authority provide any information regarding the level of sediment disturbance and any negative effects on fish, shellfish and fishing activity during construction of the existing Kentish Flats Wind farm? Can the authority also comment on how the observed level of impacts and disturbance during wind farm construction compares to any potential for sediment disturbance due to trawling and dredging activity e.g. the operation of normal shellfish harvesting?
- i) Concerns have been expressed by local fishermen regarding starfish infestation which they attribute to electro-magnetic fields associated with the undersea cabling linked to the existing wind farm. Can the authority provide any information regarding this suggestion, and whether this phenomenon has been observed in relation to other existing wind farms in the Thames Estuary? Can the authority comment on the implications of star fish infestation for various types of fish and shellfish stocks to be found in the area proposed for the wind farm extension?
- j) Can the authority confirm whether fishermen operating in the area proposed for development of the KFE project use mobile gear?
- k) Can the authority provide comments regarding whether the smaller vessels are likely to be able to transfer to other fishing grounds to carry out any types of fishing that may be displaced or adversely affected by the proposed wind farm extension.
- l) Does the authority hold a record of the identity, operators and home ports of boats that are likely to fish the area currently proposed for the Wind Farm Extension on a frequent basis? Would the authority be able to confirm how long they have been doing so? If so, please explain what form(s) this information takes.
- m) Might mitigation be justified and relevant to offset any socio-economic impacts upon operators and fishermen of any boat that might be displaced from or significantly restricted in a pattern of long-standing and frequent fishing activity on the proposed wind farm site? Is it likely that there would be requirements in terms of additional capital funding (e.g. for different equipment if certain types of fishing are precluded)? Is there any indication or evidence that losses of income or increased ongoing operating costs are likely? If so please explain the relevant details and how the assessment has been made.

- n) What are the constraints on any boat transferring its activities to other equivalent grounds in terms of the availability of licences and quota?
- o) Finally, does the authority have any observations regarding the potential for reduction in trawling and dredging area at the point where the KFE and London Array cables are proposed to cross and where it has been suggested that a protective rock mattress or 'rock dump' is to be formed on the sea bed?

**R17 – 6: To the Applicant – Lighting Scheme**

Can the applicant please confirm, in view written submissions, how and when it proposes to address the production of a lighting scheme agreed by the relevant consenting authorities, the consenting process to be followed by the parties involved and how these points are to be reflected in the wording of the DCO/DML requirements/conditions?

**R17 – 7: To the Applicant - Notification regarding transfer of beneficial interest**

A number of regulatory bodies have indicated that they would wish to be notified in the event of a change of beneficial interest in respect of the Kentish Flats Extension. Can the applicant please provide a comprehensive list of the parties who have now expressed a wish to be notified, together with a clear indication of its response in terms of the bodies to be included for notification in the revised draft DCO provisions?

**R17 – 8: To the Applicant – Southend Airport**

It is noted that Southend Airport has chosen not to register as an Interested Party for the examination into the Kentish Flats Extension Development Consent Order. Potentially significant aviation safety issues have been highlighted by the CAA and Manston Airport and agreed by Vattenfall as applicants. The CAA has highlighted that the responsibility for airport-related radar rests in this locality with Manston and Southend Airports.

In the light of these points can VF refer Southend Airport to the relevant information on the PINs NID website in order to ensure that the Airport has seen and understood the points set out by the Civil Aviation Authority and Manston Airport in their published submissions. Can VF and Southend Airport then agree a Statement of Common Ground regarding whether there are likely to be any significant impacts upon that Airport's aviation radars that would justify any specific provision within the Development Consent Order related to the proposed Kentish Flats Extension offshore wind farm?

If the Airport is not concerned regarding the potential for aviation radar impacts of the KFE project then it would also be helpful to receive clarification from the Airport's operators as to why they adopt this position when Manston Airport has expressed significant concern.

On the other hand, if the Airport operators feel that there are likely to be some significant radar effects from the proposed wind farm extension can it provide evidence as to what any significant radar effects are likely to be and justify its view as to what, if any, mitigation is likely to be needed?

## **R17 – 9: To the Applicant, Canterbury CC and Kent CC - Unilateral agreement**

How does the content of the unilateral agreement proposed by the applicant relate to the potential local impacts identified in the Local Impact Reports prepared by the relevant local authorities and should there be a closer and more direct relationship in the light of the provisions of relevant Government guidance as set out in the National Planning Policy Framework?

## **R17 – 10: To the Applicant and the CAA - Aviation obstacles - arising from ExA Written Question Q. D.2 regarding radar, navigation and search and rescue**

*Q.D.2 In response to consultation the Civil Aviation Authority has requested that the proposed turbines should be charted for aviation purposes as advised under DfT/ODPM Circular 1/2003, Annex 2. CAA has requested the developer to notify Defence Geographic Centre and that consultation take place with the CAA to agree the charting of aviation obstacles and the relevant timing of these arrangements. What progress, if any, has been made in this regard by the applicant and CAA and is this matter addressed adequately within the draft Development Consent Order?*

*(Applicant, Civil Aviation Authority)*

The applicant, Vattenfall, in its response to EXA Q.D.2 above says that is not aware of the consultation referred to in Q.D.2; instead it refers to a consultation response from CAA principally relating to Aviation Warning Lighting (although it does mention the specification that '*appropriate notifications will be made to enable aeronautical charts and databases to be updated*'). VF does not respond to my question in detail except in relation to aviation warning lighting, although it does say that '*Vattenfall will comply with CAA guidelines and ensure the necessary notification and lighting are in place to ensure aviation safety in accordance with the CAA's requirements*'. VF should note that my question was based on the letter of 24 November 2010 from CAA, which is in Appendix 2 to the IPC's Scoping Opinion, available on the project page of the National Infrastructure Directorate website<sup>2</sup>.

The CAA in its response to Q.D.2 says that the UK Hydrographic Office should be provided with certain information prior to construction, in particular:

- Positions and heights of turbines and meteorological/anemometer masts
- Construction commencement dates

It is not clear whether the need to provide information to the UKHO is an additional requirement over and above those referred to in my question. It appears from the CAA's response, however, that it does not consider that the matter is adequately addressed in the draft DCO.

Can VF and CAA please therefore provide written comments on the following points:

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<sup>2</sup> <http://infrastructure.independent.gov.uk/projects/south-east/kentish-flats-extension/?ipcsection=folder>



- (1) How should the DCO requirements be extended to adequately address any issues relating to the charting of aviation obstacles and the timing?
  - (2) What information should be required to be provided, to whom, and when, having regard to the points made by the MCA and MoD in their responses to written questions and additional written submissions?<sup>3</sup>
- (Please note that a detailed draft provision is not required at this stage, although if VF are able to agree a form of wording with CAA that would be very helpful).

### **R17 –11: To the Applicant and Fishermen’s Representatives – Fish and Fishing**

The ExA agreed to a short extension of time for submission of the Statement of Common Ground regarding the effects of the project on Fish and Fishing in response to a request from the fishermen’s representative but this deadline expired on 16<sup>th</sup> April. It is emphasised that any SoCG is able to identify and record areas of disagreement as well as areas of agreement. The ExA requests early provision of the Statement of Common Ground between Vattenfall and the relevant representative Fishermen’s organisation(s) as set out in the examination timetable.

### **R17 – 12: To Kent County Council – Marine mammal data**

Para 4.40 of the recent written submission by Kent CC advised that further data regarding marine mammals may become available as a result of recent Thames Estuary seal tagging led by the Zoological Society of London. Is there any output from that work that may be of relevance and importance to the KFE examination and that can be shared with the Examining Authority and parties to the examination? If so can it be submitted as soon as is practicable?

### **R17 – 13: To LAL Ltd – Current position in relation to in-combination effects**

LAL Ltd appeared to suggest in its original Relevant Representation that the Habitats Regulations assessment information submitted to the IPC/PINs by the applicant in relation to the Kentish Flats Extension application may be insufficient to enable completion of the Appropriate Assessment by the Competent Authority. Specific reference was made to the sufficiency/adequacy of that element of the assessment addressing the in-combination effects, including London Array Phases 1 and 2. Accordingly, the Examining Authority, in putting forward written questions for response by the parties, ensured that LAL Ltd was provided with an opportunity to explain in relation to a series of specific questions why the submitted data and analyses might be considered insufficient or inadequate. It is noted that LAL Ltd’s response to the ExA’s written questions does not appear to provide any further substantive explanation of the company’s position to support its

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3 These documents are available on the Planning Portal’s National Infrastructure Directorate website.

previous Relevant Representation. It also appears that the company does not wish to attend any of the forthcoming hearings nor make any further written submissions. In the light of these points, can LAL Ltd confirm that it does not now seek to challenge the sufficiency or adequacy of the submitted information supporting the KFE Habitats Regulations assessment, including that supporting the in-combination effects assessment?

**R17 – 14: To Manston Airport and the Applicant - Mitigation of aviation impacts - arising from Q.D.2 – 5 regarding radar and navigation.**

It is noted from the responses received from Vattenfall and Manston Airport that there is agreement that a suspensive condition is required pending satisfactory mitigation of the impact of the turbines on aviation at the airport. The issue appears to be over which person/body should decide when the suspensive condition can safely be lifted. Both VF and Manston have put forward similar but alternative versions of the suspensive condition, reflecting this difference of view. The need for a suspensive condition in relation to mitigation of the potential impacts of turbines on aviation activities is not unique to this case. Similar situations have arisen in relation to other offshore wind farms. One example is the consent for the Westernmost Rough offshore wind farm granted by the Secretary of State under s36 of the Electricity Act 1989. That consent was subject to a suspensive condition which enabled the objection by the air traffic services provider – in that case NERL – to be withdrawn. The condition was worded as follows:

*(e) No turbine forming part of the development shall begin to be constructed until the Secretary of State, having consulted with the air traffic services provider[s], is satisfied that civil aviation impact mitigation will be implemented and maintained for the life of the development and that arrangements have been put in place to ensure that such mitigation is implemented before the development gives rise to any adverse impact on air traffic services for civil aviation.*

*In this condition:*

*“air traffic services provider” means NERL, or any other person who, in the future, shall be under a duty to provide the air traffic services to civil aviation which NERL is, at the date of this consent, obliged to provide in an area which includes the development;*

*“civil aviation impact mitigation” means measures to prevent or remove any adverse impacts which the operation of the development would, but for the implementation of such measures have on the air traffic services provider’s ability to provide safe and efficient air traffic services to civil aviation in an area which includes the development during the lifetime of the development in respect of which any necessary stakeholder consultation has been completed and any necessary approvals and regulatory consents have been obtained;*

*“NERL” means NATS (En Route) plc, registered under the Companies Act (4129273) whose registered office is 5th Floor, Brettenham House South, Lancaster Place, London WC2E 7EN*

*Reason: To ensure that the Development does not adversely affect the ability of NATS (En-Route) Limited or any subsequent provider of air traffic services in the area of the Development licensed under sections 5 and 6 of the*

*Transport Act 2000 to provide safe and efficient air traffic services by means of air traffic control radar.*

I invite comments on whether such a condition might meet the concerns of both parties.

In the light of the written submission by the Civil Aviation Authority the applicant's comments are also invited regarding whether the suspensive condition should also extend to the impacts on Southend Airport.

#### **R17 – 15: To MCA – Coordinated ERCOPs**

In relation to cumulative SAR risks raised by the wind farm extension in association with other existing and planned developments in the Estuary (and in relation to any additional information and/or mitigation required) RNLI has commented in its response to ExA written questions:

*'All these matters will need to be explained in detail in the Emergency Response Cooperation Plan (ERCOP) which will have to be agreed by the MCA on behalf of the SAR community before consent can be given to the project. There will need to be a consensus across all the ERCOPs to ensure that SAR coordinators and operators only have one set of procedures to follow irrespective of the location or operator of the array affected.'*

Please clarify the objective of coordinated ERCOPs is to be given legal effect? What implications (such as the content of DCO/DML requirements/ conditions) need to be taken into account within the Kentish Flats Extension DCO and the embedded Deemed Marine Licence apart from the wording already included? If the current wording is sufficient to satisfy the MCA's purposes in relation to this particular application can this be confirmed?

#### **R17 – 16: To MMO – Evidence for positions regarding, fish and fishing impacts and suggested DCO amendment**

- a) Can the MMO clarify on the basis of what evidence it agrees with the conclusions of the applicant's Environmental Statement in relation to the likely impacts upon fish and fishing? Is this position based on the evidence assembled by the applicant or are there any other relevant sources of data available to MMO and if so what are they? For example did the MMO draw on the data available from the CHARM research programme (Channel Habitat Atlas for Marine Resources Management)?
- b) Can the MMO clarify the precise purpose of the proposed Fisheries Liaison Officer and how this role would relate to the proposed KFE project? For example, would the post-holder undertake any duties outside the scope of the KFE project? Would the scope of the role meet the provisions of Circulars 11/95 and the National Planning Policy Framework if included as a DCO requirement? Or is the MMO suggesting that it should be added as a DML condition?

## **R17 – 17: To MMO, PLA and the Applicant, - Rights of Navigation**

Vattenfall in its response to ExA Written Question Q.J.6<sup>4</sup> proposed an alternative wording to provide for the extinguishment of public rights of navigation (PRN) to cease on decommissioning of the turbines, as suggested by the Port of London Authority (PLA), stating that it had been agreed by the Marine Management Organisation (MMO). I note that the PLA has also agreed the proposed wording in its statement which is Appendix 7 to VF's First Response document (Ex1).

The other matter addressed by my question Q.J.6 was my understanding that the draft DCO proposed the extinguishment of PRN *'across the location of the Extension turbines and within exclusion safety zones'*. The draft DCO provision seemed to suggest this by the use of the phrase *'the places in the sea where the turbines are located.'* Responses to my questions suggest that others have interpreted the provision more restrictively, so that PRNs will be extinguished only over the sites of the individual turbines and not throughout the area of the extension.

I therefore invite the applicant, MMO and PLA to provide written comments on each of the following points:

- (1) Formal confirmation that the wording proposed by the applicant in its response to my question Q.J.6 satisfactorily addresses the issue raised by PLA
- (2) (a) That the intention is only to extinguish PRNs over the sites of the individual turbines and not the extension area as a whole, and  
(b) If that is the case could the clarity of the DCO provision be assisted by re-phrasing and re-ordering the provision, for example to read:  
9(1) – In this article:  
"the extinguishment plan" means a plan submitted by the undertaker to the Secretary of State showing the locations and areas of the sea below which the foundations of each of the turbines are to be constructed as part of the authorised development;  
"the extinguishment date" means the date following the expiry of 14 clear days from the date of receipt of the extinguishment plan by the Secretary of State  
(2) The rights of navigation over the areas immediately above the foundations of each of the turbines as shown on the extinguishment plan shall be extinguished on and from the extinguishment date until that turbine has been decommissioned and permanently removed at which time the rights of navigation will immediately revive

## **R17 – 18: To MoD Defence Infrastructure Organisation (Safeguarding – Wind Energy) – Turbine and anemometer location notification and mapping**

It is noted that the MoD submission requests notification of any variation of turbine locations from the precise grid references on which its response is based. However the DCO application seeks express consent for erection of turbines within a defined area established by specified 'limits of deviation'. It

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<sup>4</sup> See Vattenfall's First Response document (Doc Ex1) page 107

is noted that the Civil Aviation Authority in its written representation is content to accept this arrangement subject to notification of any variations outside the defined limits of deviation (in fact this would require a fresh application). The applicant has indicated a possible need for localised 'micro-siting' variations to take account of the potential effect of variations of ground conditions on foundations and to enable avoidance of any sites of marine archaeological interest identified during further work on this aspect. It is further noted that Condition 4(9)(b) of the draft Deemed Marine Licence embedded within the draft Development Consent Order provides for notification of the Hydrographic Office of both the progress and completion of the authorised development in order that all necessary amendments to nautical charts are made. The DCO and DML also include provisions as to lighting, including aviation lighting. Is there any reason why MoD requires notification (above and beyond the information requested by the CAA) of additional details beyond the location of the DCO area, proposed maximum turbine heights and limits of deviation? If so, can MoD please provide an explanation of these reasons?

#### **R17 – 19: To National Air Traffic Control Services – Aviation radar effects**

It is noted that NATS has chosen not to become part of the examination into the proposed Kentish Flats offshore wind farm extension (KFE). During the course of the examination to date, responses to the Examining Authority's written questions, written submissions and a Statement of Common Ground have been received in relation to mitigation of potential significant effects on aviation radar (see the attached copies of relevant correspondence from the Civil Aviation Authority and Manston Airport). Potentially significant aviation safety issues have been highlighted by the CAA and by Manston Airport in particular and agreed by Vattenfall as applicants. The CAA has highlighted that the responsibility for airport-related radar rests in this locality with NATS, Manston and Southend Airports and has encouraged engagement in that regard.

In the light of these points can NATS:

- a) Confirm that there are unlikely to be any significant impacts from the KFE project upon NATS aviation radars that would justify any specific provision within the Development Consent Order?
- b) In this context it would also be helpful to receive clarification of why the operators of NATS are apparently unconcerned regarding the radar effects of the KFE project when Manston Airport has expressed significant concern.
- c) On the other hand, if NATS feels that there are likely to be some significant radar effects from the proposed wind farm extension can evidence be provided regarding what any significant radar effects are likely to be, together with an indication of what, if any, mitigation is likely to be needed and what provision could be required in the Development Consent Order?

#### **R17 – 20: To Natural England – SPA provisions**

Can Natural England please provide the latest version of the relevant statement of Conservation Objectives, Definitions of Favourable Condition for features of the site and Advice on Operations for the Outer Thames Estuary SPA? Can it also provide a copy of the latest risk assessment undertaken for the SPA protected species?

**R17 – 21: To Natural England – RTD population figures**

The wording of the published conservation objectives for the Outer Thames SPA appears to relate to the citation population figures rather than the latest surveyed figures for the population of the protected species of Red Throated Divers. It has been indicated at para 8.2.10 p17 of Appendix 2 in the applicant's HRA report, in RSPB's written submission and in the information submitted by LAL Ltd that the citation population of Red-Throated Divers within the SPA may have been substantially underestimated. The ExA is aware of guidance and advice issued that addresses the role of the Competent Authority in considering situations where there are significant declines evident when compared against the citation population estimates in a designated area.

NE advice to Competent Authorities in relation to SPAs and other protected areas appears to focus upon situations where the known population of a protected species is falling from its citation/designation level. Can NE assist the ExA by highlighting any equivalent published relevant guidance or advice that addresses the position(s) to be taken by an Examining Authority or the Competent Authority where the surveyed population of a protected species exceeds by some margin the citation population estimate on designation of a protected area?

**R17 – 22: To Natural England (and other parties participating in the workshop to be led by NE including the applicant) – nature conservation effects**

- a) Further to the submissions of Natural England, RSPB, Kent Wildlife Trust and the applicant – and further to the workshop it is convening in early May - can Natural England acting in its capacity as workshop lead provide by the relevant deadline specified in the revised Rule 8 examination timetable the Statement of Common Ground regarding the ExA's questions on nature conservation matters including the habitats regulations assessment?
- b) Without at this stage taking a view on its technical merits Kent Wildlife Trust has provided as part of its recent submissions a clear and specific calculation of the disturbance/displacement of Red Throated Divers across the SPA which raises a number of questions. As part of, or in support of, the proposed Statement of Common Ground can the applicant, in consultation with the nature conservation bodies:
  - i) agree and submit to the ExA an equally clear and specific set of calculations for the disturbance impact of the KFE project both alone and in-combination with other projects (including London Array Phases 1 and 2), and
  - ii) identify in specific and detailed terms any areas of agreement and/or disagreement.

- c) Can Natural England, RSPB, Kent Wildlife Trust and the applicant agree whether the data and analysis submitted by LAL Ltd in its response to the ExA's written questions and invitation for written submissions contributes any new and helpful information to the habitats assessment relevant to the KFE project? If so can the parties please indicate their conclusions together with any points of agreement or disagreement in their Statement of Common Ground?
- d) Can Natural England clarify the incomplete statement of its view in relation to the ExA's written question QA8?
- e) Can Natural England clarify why it has sought from the applicant additional analysis against a baseline prior to construction of the original Kentish Flats wind farm? Does NE take the stance that the relevant baseline for assessment of impacts upon the integrity of the SPA should be the habitat and species population baseline positions at the date of SPA designation, i.e. when the SPA objectives were authorised, or the position at the application date for either the original Kentish Flats wind farm or the Kentish Flats Extension? What is the policy and rationale behind NE's approach?
- f) Can Natural England clarify what are the concerns regarding underestimates in the applicant's HRA report referred to in NE's response to ExA written question QA8?
- g) Can NE confirm together with the applicant and the other nature conservation parties participating in the workshop and producing the Statement of Common Ground that the applicant's collision mortality and displacement/disturbance calculations and predictions relevant to the HRA assessment for KFE are adequate and based on sufficient and appropriate data and analysis?
- h) Can NE, the applicant and RSPB comment on the argument put forward by KWT in its recent submission that it doubts '*whether such a large impact [by the KFE project alone on RTDs within the SPA] can be mitigated?* Is it clear that any significant effects identified that would be likely to arise from the proposed Kentish Flats Extension project considered in isolation or in combination with other relevant projects can be mitigated?
- i) It is noted that Kent CC has highlighted in its recent Local Impact Report submission the marine mammal populations in the North Kent area. The Kent Wildlife Trust in its submission has argued for greater mitigation and compensation for construction impacts and the provision of compensatory foraging habitat in the Swale Marine Conservation Zone. Can Natural England consider the points made by KWT? In the light of the points raised can NE confirm that the mitigation provisions within the submitted draft Development Consent Order are adequate? If not can it suggest how the wording should be amended or supplemented?
- j) On a similar basis a need for a higher level of mitigation of impacts and conservation measures for Thornback Rays has been argued by Kent Wildlife Trust. Can Natural England consider the points raised by KWT in this context? In the light of these points can Natural England confirm that any relevant mitigation provisions within the submitted draft DCO are adequate? If not can it suggest how the wording should be amended or supplemented?

- k) Can NE confirm that it is satisfied that the use of Alternative Current technology represents sufficient mitigation of potential effects on species such as Thornback Rays and provide an explanation of and justification for its position?
- l) Can the applicant and nature conservation bodies agree within the Statement of Common Ground any restrictions for timing of piling works as a form of mitigation to construction impacts? If so, can NE or the applicant please put forward a suitable method to incorporate into the DCO/DML? If not, can the Statement of Common Ground summarise clearly any disagreements between the specified parties and reasons, together with reference to any supporting evidence.

**R17 – 23: To Natural England, the applicant and nature conservation parties – integrity of the site**

Through an appropriate assessment, Competent Authorities are required to ascertain the effect on the integrity of the designated site (in this case the Outer Thames Special Protection Area). The term '*the integrity of the site*' was defined in paragraph 20 of ODPM Circular 06/2005 (DEFRA Circular 01/2005) as the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified. Do Natural England, the applicant and the other nature conservation parties all agree that this definition of 'the integrity of the site' is still the definition that needs to be considered by both the Examining Authority in conducting the examination and by the competent authority in finalising the appropriate assessment?

**R17 – 24: To Natural England, the applicant and nature conservation parties – coherence of ecological structure and function of the SPA**

Can the parties identified above identify and summarise any significant effects upon the coherence of the ecological structure and function of the Outer Thames SPA across its whole area that would be likely to arise from implementation of the Kentish Flats Extension Project (when considered in isolation or in combination with existing, under-construction or planned projects of relevance)? Would any significant adverse effects identified compromise:

- a) the sustainability of the habitat or complex of habitats identified within the defined SPA boundaries in the SPA citation and/or
- b) the citation levels of the population of the Red Throated Diver identified within the defined SPA boundaries?

Please explain in detail the rationale and justification for any response made, including commentary upon any significant effects upon favourable condition and whether it is anticipated that there could be any noteworthy changes in impacts or levels of impact over the anticipated lifespan of the proposed project.

Also – can the conclusions of the relevant parties (including specification of any areas of agreement or disagreement) be set out in the proposed Statement of Common Ground?



## **R17 – 25: To Natural England, RSPB, Kent Wildlife Trust and Vattenfall – Survey information submitted by London Array Ltd**

All respondents who have addressed the ExA written questions regarding the key projects to be taken into account in any cumulative assessment of impacts relevant to the Kentish Flats Extension application have identified the London Array Phases 1 and 2 as of considerable importance. Notwithstanding this apparent consensus, in their recent submissions Natural England, Vattenfall and some other respondents including RSPB have expressed the view it is not necessary for the Examining Authority to consider that the work undertaken by LAL Ltd for the assessment of London Array in order to come to its view regarding the cumulative impacts of the Kentish Flats Extension in combination with other projects. However it would appear essential that any assessment takes account of the relative significance of any impacts identified – for example the mortality and disturbance/displacement levels for Red Throated Divers – when compared assessed against the total population of RTD within the Outer Thames SPA in the light of the designation objectives for the SPA.

The approach taken to assessment of the significance of the impacts upon the SPA in Vattenfall's HRA report is based upon the citation population estimate for Red Throated Divers, although at para 8.2.10 of the HRA report, Appendix 2, p17) the applicant indicates that the citation value of the SPA population '*is known to be a very considerable underestimate and the actual value is likely to exceed double that number*' (the basis for this comment it is not entirely clear).

In its latest written submission the RSPB indicates at paragraph 2.2 that '*as a result of additional survey results (from London Array Ltd) the citation population is now appearing to be an underestimate.*' At para 4.3 of the RSPB submission the LAL survey document referenced is the '*London Array Offshore Wind farm: Ornithological Survey Report 2010/11*' (APEM, October 2011). The citation population for the Outer Thames SPA as a whole is given in the Vattenfall HRA report (Appendix 4, Standard Data Form) as a total of 6,466 regularly wintering RTD. However the LAL/APEM survey report identified a peak number of 8,194 RTD as being found within the London Array wind farm area alone during that survey period.

How robust are the survey methodology, analysis and conclusions of the survey information for London Array Phases 1 and 2 submitted by LAL Ltd to this Examination? Do the data and/or analysis and/or conclusions of this recent LAL survey data offer any relevance or importance to the cumulative assessment element of the Appropriate Assessment for the Kentish Flats Extension application?

## **R17 – 26: To the relevant nature conservation bodies and the Applicant – Monitoring of nature conservation effects**

It is noted that the RSPB seeks agreement in advance of issuing any consent of a monitoring plan to be agreed between the relevant nature conservation bodies and the applicant and coverage by an appropriately worded Deemed Marine Licence condition in order to secure implementation before, during and

after the construction period. Canterbury CC has also commented in its Local Impact Report that it seeks agreement of enhanced monitoring of impacts on water quality and the designated A Class shellfish waters important for Oyster harvesting. Monitoring of bathing water quality has also been considered in the earlier liaison with the Environment Agency and local authorities. Other parties may seek a role or have a requirement for monitoring specific aspects related to the proposed project and/or its setting and environment. Can the applicant consult with the parties to the examination and any other parties who may be relevant and put forward an assessment of the monitoring requirements together with specific proposals for monitoring the project in terms of the pre-construction baseline, together with its construction phase and operational phase impacts/effects.

In order to seek agreement as far as practicable regarding a specific monitoring regime with Natural England, the MMO and relevant nature conservation bodies regarding relevant nature conservation aspects the applicant is requested to include the outline specification within the proposed Statement of Common Ground. This information should include a proposed timescale for finalisation of the detailed and agreed plan for the overall monitoring arrangements before the commencement of the examination hearings.

If this is not practicable then can the applicant and the relevant nature conservation bodies please explain the reasons why not and provide an assessment of the potential implications of any failure to agree relevant monitoring procedures and standards?

#### **R17 – 27: To RSPB and other parties – Piling restrictions**

At paragraph 3.3 of its written representation RSPB requests *'that piling is not carried out during November to January and the first thirteen days of February'*. The latter part of this timescale seems very specific when applied to what is presumably variable bird behaviour. On what basis has the specified period been identified? Do any other parties wish to comment on the timescale for wind farm construction piling activity suggested by the RSPB?

#### **R17 – 28: To RSPB – Clarification of references**

The ExA would welcome clarification of the references to mitigation and monitoring measures and to amendments to the Development Consent Order in the RSPB submission paragraph 5.1. Precisely what mitigation measures does the RSPB consider important and why? Similarly precisely what monitoring measures and what specific amendments to the DCO wording are considered relevant and necessary and for what reasons?

#### **R17 – 29: To RSPB - Monitoring**

At para 5.16 of its written submission RSPB *'strongly recommends that a rigorous and thorough monitoring methodology be attached to the MMO licence (HRA Report, appendix 2) with associated necessary conditions to ensure that the monitoring requirements are legally enforceable.'* To enable this to occur before the end of the Examining Period, the RSPB also recommends: *'that the intended consultation with MMO, Cefas and Natural England needs to take place and the monitoring plan concluded, to ensure*

*that the Examining Authority has all needed information to enable him to complete his report to the Secretary of State.'*

The ExA appreciates the need for establishment of appropriate monitoring arrangements and will consider this matter further as the examination proceeds. But how would conclusion of a monitoring plan assist in providing the ExA with information for preparation of the shadow appropriate assessment - and to support the Competent Authority's final appropriate assessment - given the statutory timescale for examination and reporting set out in the Planning Act 2008 as amended?

It would be necessary for any monitoring plan to be implemented over time in order to generate monitoring data. Would the timescale necessary for adequate monitoring enable account to be taken of any output data within the timetable necessary to complete the shadow or final AA for this project application within the statutory deadlines within which the examination, reporting and Secretary of State's decision must be concluded?

By making its submission at Para 5.16 is the RSPB suggesting that there is insufficient information for an appropriate assessment to be completed for the Kentish Flats Extension project? If so can RSPB explain in detail what information is missing or otherwise inadequate to enable the assessment to be completed?