



## MEETING NOTE

<b>File reference</b>	<b>EN010027 Walney Offshore Wind Farm Extension Proposal</b>
<b>Status</b>	<b>Draft</b>
<b>Author</b>	<b>Steffan Jones</b>

<b>Meeting with</b>	DONG Energy
<b>Meeting date</b>	1 March 2013
<b>Attendees (Planning Inspectorate)</b>	Kathryn Powell – Senior Case Manager Jessica Potter – Principal Case Manager Steffan Jones – Case Officer Patrycja Pikniczka – Assistant Case Officer Andrew Luke – Senior EIA Advisor Sarah Green – Lawyer
<b>Attendees (non Planning Inspectorate)</b>	Andrew Prior – Examination Manager, DONG Energy Sally Holroyd – Consent Manager, DONG Energy Jodie Hall – Stakeholder Coordinator, DONG Energy
<b>Location</b>	Room 4/07, Temple Quay House, Bristol

<b>Meeting purpose</b>	To discuss draft documents and update on the project.
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<b>Summary of key points discussed and advice given</b>	<p>The Planning Inspectorate explained the openness policy (that any advice given will be recorded and placed on the planning portal website under s.51 of the Planning Act 2008 (as amended by the Localism Act 2011) (PA 2008) and that any advice given does not constitute legal advice upon which applicants (or others) can rely).</p> <p><b>Overall</b></p> <p>The applicant<sup>1</sup> delivered a presentation on the project progress and updates on the proposed application. The applicant and National Grid will both apply separately through the PA 2008 and Town and Country Planning Act (respectively) for a new road in the vicinity of the substation. The applicant's presentation is available <a href="#">here</a>. The applicant stated that some changes to the project design were made and that an upcoming round of consultation will include those changes, as detailed below.</p> <p><b>Project Update</b></p> <p>The applicant confirmed that they had published a memorandum of design changes on their website. They have sent these details to all persons who responded to their previous s.47 (community) consultation and they have</p>
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<sup>1</sup> Where this note refers to 'the applicant' means DONG Energy.

publicised additional consultation events. They are intending to carry s.42 consultation on these changes. They are not intending to undertake any further publicity under s.48. The Planning Inspectorate queried why the applicant has taken this approach. The Planning Inspectorate advised the applicant to explain, within their consultation report, why statutory consultation is not being undertaken in accordance with s.47 and publicity in accordance with s.48 regarding the changes.

The anticipated submission date of the application is 15 May 2013; however the applicant advised that the exact date will depend on a number of factors, including the latest round of consultation exercise.

The applicant described the site for the proposed onshore substation and explained that, following discussions with the local planning authority, the selected site was the only feasible option due to the need for proximity to the proposed National Grid substation and potential contamination at an alternative site. The cable landfall site was also described. The current proposed route (2a) had been modified from the previous option 2, to take a shorter route across the edge of the saltmarsh.

The applicant increased the capacity of the biggest turbines from 7.5MW to 8MW however the physical dimensions of the largest turbines remain unchanged. As a result, a smaller number of turbines on site could achieve the overall projected capacity.

The applicant informed the Planning Inspectorate that the worst case scenario regarding the implementation of suction caisson foundation construction changes and height of the proposed turbines was presented to chosen consultees.

The Planning Inspectorate queried the anticipated distance from the shore line of the nearest turbines; the applicant explained that it is approximately 19km from shore line. The applicant advised the Planning Inspectorate that the existing Walney Wind Farms (1 & 2) are closer to the shore than the proposed Walney Extension.

The applicant confirmed that "purdah" should have no effect on their consultation or negotiations with the local authorities. The Planning Inspectorate advised the applicant keep meeting notes as a record when consulting with local authorities near "purdah".

The applicant is currently drafting the report on the Habitats Regulation Assessment. The Planning Inspectorate enquired whether the applicant has agreements in place with any statutory consultees with regard to this report. The applicant confirmed that agreements are in place with the local

planning authority (through a PPA) and discussions with Natural England and JNCC had taken place. Information that arose from environmental monitoring of the Walney 1 and 2 projects were useful in informing the DONG Energy's Walney Extension Report. The Planning Inspectorate advised the applicant to submit any written confirmation of agreements with the application.

### ***DCO and Explanatory Memorandum***

The applicant was advised that the definition of 'maintain' is too wide as it includes reference to remove, clear and reconstruct, which are not necessarily maintenance issues. The Planning Inspectorate advised that this was an area where the Marine Management Organisation (MMO) had voiced concern on other applications. The applicant explained that this definition was necessary to enable the replacement of a section of a cable if something were to happen to the cable which would affect the running of the project and that discussions had taken place with MMO in this respect with alternative drafting to be discussed.

The Planning Inspectorate suggested reviewing the definition of the 'undertaker' within the draft DCO as it currently reads that anyone who has an interest in the land in respect of which the DCO is made will be an undertaker for the purposes of the DCO and the undertaker is afforded a wide range of powers under the draft Order. The applicant agreed to clarify this matter.

The Planning Inspectorate queried whether the applicant was anticipating any applications under s.127 or 128 of the PA 2008. The applicant confirmed it does not anticipate applications in accordance with these sections of the PA 2008.

The Planning Inspectorate advised the applicant to be clear when specifying associated development and ancillary works within the draft DCO, as the same works cannot be both associated development and ancillary works.

The applicant was advised to review requirement 21 that refers to alterations to connection works to ensure that it is clear that the works permitted are those within the scope of the Environmental Impact Assessment, as well as the order limits.

The Planning Inspectorate queried if the applicant was able to specify within work no. 1 of the draft DCO the range of generating capacities for individual turbines proposed. This could help to ensure that the proposed project is sufficiently clearly defined within the draft DCO. The applicant agreed that this approach should be possible.

The Planning Inspectorate asked whether the draft DCO

would limit the volume of material used for cable protection measures. The applicant stated that a deemed marine licence condition will cover this. The Planning Inspectorate advised that the draft DCO/Deemed Marine Licence should be consistent with the development assessed within the environmental statement.

The Planning Inspectorate suggested the applicant considers whether s.138 of the PA 2008 ('Extinguishment of rights, and removal of apparatus, of statutory undertakers etc') could be triggered by the proposal.

The Planning Inspectorate noted that Requirement 4 of the draft DCO provided for as yet unidentified restricted build areas and questioned whether any restricted build areas were anticipated within the offshore order limits. The applicant responded that they may be but this required further consideration.

Draft DCO requirements regarding navigation and offshore safety management were discussed. The Planning Inspectorate advised that the applicant may save time at the examination stage by agreeing the draft wording with the Maritime and Coastguard Agency (MCA) and Trinity House prior to submission and confirming any agreement within the EM and consultation report.

The Planning Inspectorate asked why draft DCO requirement 29 ('ecological management plan onshore') was limited to 'onshore'. The applicant confirmed that offshore requirements in respect of marine issues would be covered by the deemed marine licence and incorporated into the draft DCO by that route. This would be explained in the EM.

Article 35 of the draft DCO relates to extinguishment of public rights of navigation. The draft EM explains that this article only applies to that part of the authorised project within English territorial waters. The Planning Inspectorate advised that the extent to which this applies to the authorised project is made more clear within this article of the draft DCO.

### ***Deemed Marine Licence***

The Planning Inspectorate noted that the draft DCO refers to the granting of a deemed marine licence; however the licence is not included within the current draft. The Planning Inspectorate noted that the transfer provisions of the draft DCO allows for splitting of the marine licence and, the Explanatory Memorandum (EM) suggests that most of works 2-14 (including offshore works) will be transferred to an OFTO. The Marine and Coastal Access Act 2009 does not permit the splitting of marine licences and the person named in the licence will remain liable regardless of any transfer of the DCO or ownership. The Planning Inspectorate suggested

that in consideration of this, the applicant may wish to have more than one marine licence. The applicant confirmed that this was already under consideration.

### **Plans**

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) state that the limits within which the development and works may be carried out and any limits of deviation provided for in the draft order should be displayed on the works plans. The Planning Inspectorate noted that the draft DCO and EM do not make reference to the 'limits of deviation'; however the order limits are referred to within these documents and these limits should be clearly displayed on the works plans. Currently the works plans do not contain all relevant information.

The applicant agreed to add the boundary to the plans and to confirm the scale on which the plans will be submitted.

Based on experience of other offshore wind farm examinations, the Planning Inspectorate advised that the applicant ensures it submits a clear land plan at a scale compliant with the APFP Regulations showing the interface between on- and offshore connection.

### **Draft Consultation Report**

The Planning Inspectorate advised that in viewing the draft consultation report, a check of the consulted persons was not performed. It was also noted that the draft consultation report submitted was largely incomplete.

The applicant was advised to be clear when referring to the DCLG Guidance on pre-application consultation and to explain which guidance the report refers to, the superseded version or new updated guidance.

The applicant asked whether they should be informing everyone that the application was formally submitted to the Planning Inspectorate. The applicant was advised that upon submission, no notice is required. However at the pre-application stage a notice must be published by the applicant under s.48 about the proposed application and a further notice under s.56 if the application is accepted by the Secretary of State for examination. A notice under s.56 must include a deadline for receipt by the Secretary of State of relevant representations providing at least 28 days for responses.

The Planning Inspectorate advised the applicant that it may be useful to clearly identify the start of each new chapter in bold using new page in the content list to ensure the ease of navigation.

**s.42**

The applicant was advised to explain what is meant by 'key responses' for example in page 34. The Planning Inspectorate noted that references made to s.42 are now incorrect for example the report states s.42(a) instead of s.42(1)(a) and that it is the Secretary of State who should be notified under s.46 rather than the Planning Inspectorate (see the Localism Act 2011 amendments to the Planning Act 2008). The advice was given to ensure that all sections of the Act, legislation and guidance are correctly referred to.

The Planning Inspectorate advised the applicant to identify the deposit locations for displaying of the project application.

**s.44**

Information on s.44 was incomplete in the draft consultation report. The applicant was advised to ensure that a list of all s.44 consultees is provided in the consultation report as the Compliance Table currently refers the reader to the Book of Reference for the full list. The Planning Inspectorate advised the applicant that all information relevant to the consultation should be included in the report as the consultation report (only) will be sent to the relevant local authorities at the acceptance stage, who will then be invited by the Planning Inspectorate to submit adequacy of consultation comments.

**s.47**

Chapter 8 regarding s.47 is largely incomplete in the draft consultation report. The Planning Inspectorate advised that a copy of the Statement of Community Consultation (and newspaper cut-outs if possible) should be provided (for example as appendices) within the report.

The applicant should clearly state how it complied with s.47 of the PA 2008 at the time of consultation, as s.47 has now been amended by the Localism Act 2011.

**s.48**

The applicant was advised to be clear when describing in the report which bodies were sent a copy of the s.48 notice.

The applicant was advised to include original copies of the published notice.

The Planning Inspectorate advised to be clear in the report when explaining which consultations were statutory and which are non-statutory, especially considering that the applicant carried on its 'further non-statutory consultation beyond formal consultation'.

The Planning Inspectorate advised that use of the 'preliminary meeting' phrase to describe the applicant's initial

meeting with the local authorities could be potentially confusing. It was suggested that this term is reserved for the purpose as intended in the PA 2008; the applicant agreed.

The Planning Inspectorate noted a logical and clear use of the individual sections which specify all types of consultation undertaken; however the use of the appendices within the contents list should be clearly described.

It was noted by the Planning Inspectorate that use of tables was a good method to explain issues raised by certain bodies. The applicant was advised however to ensure that the name of every stakeholder (if known) is included in the table in the same way as the comments from the others, rather than saying that a number of similar concerns were raised by other stakeholders; this ensures that everyone is fairly included.

The consultation report should clearly state and departures from the relevant DCLG Guidance.

#### ***Compliance Table***

The applicant submitted a 'compliance table' in addition to the consultation report. The Planning Inspectorate queried whether this table includes all checks included in the 'acceptance checklist'.

The Planning Inspectorate advised that responses from non-statutory consultation could be included in a table similar to that used regarding s49, especially if those comments influenced the project. However it should be clear which responses were submitted in accordance with statutory and non-statutory consultation.

S.45(3) of the table refers to the consultation documents in accordance with s.42 and it currently states that applicant provided documents to some persons as specified; however it does not state whether the same set of documents were provided to persons in accordance with s.44. General statements should be avoided; it should be clear which persons were consulted in accordance with the relevant sections of the PA 2008.

As the applicant's compliance table in the consultation report currently refers to the (now superseded) DCLG Guidance from September 2009 and the applicant's first two stages of consultation were carried out whilst the above guidance was still in place. The Planning Inspectorate advised the applicant to explain how the applicant feels it has met the guidance in the revised version.

#### **AOB**

The applicant confirmed that it is currently satisfied with any trans-boundary issues that may arise from the proposed

	<p>project.</p> <p>The Planning Inspectorate advised the applicant to take care when limiting the length of cables required for the proposed application to ensure that the applicant allows enough flexibility in the order.</p> <p>The applicant raised a concern with regard to the particular statutory consultee not engaging in the consultation process. The Planning Inspectorate suggested that this is captured in the applicant's consultation report. The advice was given to the applicant that correspondence from any statutory consultees who declared that they do not have any comments on the application and do not wish to participate in the examination should also be included within the report.</p>
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<b>Specific decisions/ follow up required?</b>	<p>The applicant has agreed to provide the Planning Inspectorate with copies of marine licences.</p> <p>The Planning Inspectorate agreed to provide further advice on article 5 of the DCO.</p>
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<b>Circulation List</b>	Attendees