

**Application by Smart Wind Ltd for Hornsea Project One Offshore Wind Farm (the application) located approximately 103 km from the Yorkshire Coast**

**Hearing Agendas: Issue-Specific Hearing**

**Infrastructure Planning (Examination Procedure) Rules 2010**

This document sets out agendas for the Issue-specific Hearing.

**Participation in hearings**

All interested parties are invited<sup>1</sup> to attend the hearings. Each interested party is entitled to make oral representations at the hearings<sup>2</sup> (subject to the Examining Authority's (ExA's) power to control the hearings).

Oral representations should be based on the relevant or written representations made by the person by whom (or on whose behalf) the oral representations are made<sup>3</sup>.

Any interested party who wishes to make an oral representation on an agenda item is requested<sup>4</sup> to bring **six written copies of their intended representation** for the benefit of the ExA and others taking part in the hearing.

<sup>1</sup>Guidance for the examination of applications for development consent for Nationally Significant Infrastructure Projects, DCLG, 2010

<sup>2</sup> S91 and s93 Planning Act (PA 2008)

<sup>3</sup> S91 and s93 Planning Act (PA 2008)

<sup>4</sup> Rule 17 EPR

## **Issue-specific Hearing**

**Venue:** Humber Royal Hotel, Grimsby

**Date:** Tuesday 29 April 2014, continuing on Wednesday 30 April 2014 and 1 May 2014

**Time:** 9.30am

### **Agenda – Part One – HRA, construction impacts and socio-economic matters**

#### **1. Identification of participants**

#### **2. Questions from the Panel**

The Examining Authority (ExA) wishes to receive updates on the discussions between the applicant and interested parties on the matters raised at the Specific Issue hearings.

The ExA also intends to use the hearing to discuss any immediate points arising from answers to the Second Round of Written Questions.

Interested parties will note that there is an immediate correlation between some of the issues identified and the draft Development Consent Order (DCO) and Deemed Marine Licences (DMLs).

This agenda is only indicative.

#### **2.1 Habitats Regulations Assessment – ornithology**

- Use of Band 1 vs. Band 4 models – current preferences of applicant and Natural England (NE), validation requirements for survey data to support Band 4, behavioural factors for specified species, avoidance factors, mitigation or compensation measures (EO18)
- Update on findings of the Scottish Marine/Scottish Natural Heritage study in relation to underpinning evidence for the various models, especially the Band 4 model (EO19)
- Species-specific assessments for Band Models 1 and 4 , for the Hornsea 1 project alone , and in combination with other projects, including the significance or otherwise of any adverse effects on the integrity of the Flamborough Head and Filey Coast pSPA (EO22)
- Progress on the draft Ecological Management Plan, including principles, parameters, enforcement and monitoring (EO23, EO24)

- Requirement for monitoring and scope for adaptive management over the life of the project
- HRA and possible need for Appropriate Assessment—alternatives considered, possible case for IROPI and possible compensatory measures if IROPI invoked (EO25)
- Trans-boundary issues (EO26)

## **2.2 Habitats Regulations Assessment – marine mammals and onshore**

- Inter-tidal combination effects (EL16)
- Possible requirement for restriction on piling to protect specified species

## **2.3 Construction impacts**

- Inter-tidal and landfall footprint relationship between Hornsea Project 1 and Hornsea Project 2 (CL16)
- The timing and sequence of the occupation of each of the individual onshore/intertidal construction compounds (CL17)
- The timing and sequence of works around each site for the various stages of construction (ibid)
- Hours of working and the numbers of people working on each site (ibid)
- Traffic impacts, including the likely numbers of vehicles required for construction purposes at various stages (ibid)
- Other impacts on local communities, including the calculation of possible noise contours (ibid)
- Progress on development of Code of Construction Practice (CoCP), including principles, parameters, enforcement and monitoring (CL18, CL19)
- Spoil management (CL20)
- Risk minimisation to habitats and species (CL21)
- Dust and particle management (CL23)
- Offshore construction: approval process for phasing of development across the sub-zone and the form that it will take; control mechanisms for phased build-out (CS17, CS18)
- Limitations on or specification of size of turbines

## **2.4 Socio-economics**

- Evidence base for socio-economic impact assessments (SE5)
- Measures planned by the applicant to deliver local area supply-chain benefits for both the construction and operation and management stages of the project (SE6)
- Measures planned by the applicant to deliver local area employment and skills benefits for both the construction and O&M stages of the project, including for disadvantaged groups (SE7)

## **2.5 Impacts on fishing and navigation**

- Development of Emergency Response Co-operation Plans (ERCoP) (NS20)
- Appropriate separation distance (MGN 371) for assessing the impacts on shipping, and post-construction surveys (NS21, NS23)
- Extent of cable protection and scour (NS22)
- Monitoring arrangements (including duration) and scope for adaptive management (NS23)
- Scope for promotion of biodiversity enhancement

## **Agenda – Part Two - Development Consent Order**

### **1. Identification of participants**

### **2. Questions from the Examining Authority (ExA)**

The views of the applicant and other parties will be sought on the ExA's proposed text as set out in red in this Agenda.

The applicant and other parties will be asked to update the ExA on developments in the drafting of the DCO.

### ***Articles - definitions***

#### *2.1 Local planning authority*

"the local planning authority" means, in relation to any land or part of the authorised development, the district or unitary council for the area in which the land or development is situated;

#### *2.2 Maintain*

"maintain" includes maintain, inspect, repair, adjust, alter, refurbish, decommission, remove and demolish, and subject to requirement 20, reconstruct and replace and "maintenance" is to be construed accordingly; [applicant's version]

"maintain" means the upkeep, repair or reasonable improvements of the works. [MMO proposal]

"maintain" includes inspect, repair, adjust and refurbish the authorised development; and subject to Article 7(2) "maintenance" shall be construed accordingly;

### ***Articles - clauses***

#### *2.3 Guarantees and enforceability*

#### **Guarantees in respect of payment of compensation**

**4.—(1)** The undertaker must not begin to exercise the powers of articles 17 to 27 of this Order in relation to any land unless either 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 in relation to that land or an alternative form of security for that purpose is in place which has been approved by the relevant local planning authority.

(2) A 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.

(3) The guarantee or alternative form of security is to be in place for a maximum of 20 years from the date that the relevant power of the Order is exercised.

(4) The guarantee or alternative form of security shall be in such form that it is enforceable by Third Parties pursuant to the Contracts (Rights of Third Parties) Act 1999.

#### *2.4 Maintenance*

##### **Maintenance of authorised project**

7. (1) Subject to the other terms of this Order, the undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order, provides otherwise.

(2) No maintenance works may be carried out which fall outside the impacts assessed in the environmental statement.

#### *2.5 Discharge of water, and C.Gen's concerns*

Adequacy of Article 15 as currently drafted.

##### **Discharge of water**

15.—(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 and subject to receipt of consent under paragraph (3), make openings into, and connections with, the watercourse, public sewer or drain. [Applicant's amendment]

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(p) (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.

## *2.6 Transfer of benefit of Order, and the MMO objection*

DC 24 in second round of written questions (R2Qs): Given that there is no precedent for the splitting of Marine Licences, and no basis for assuming that the Secretary of State would necessarily agree to this, can the applicant please suggest alternative wording for the definition of works in the Marine Licences that would allow the flexibility that it considers necessary while restricting the works to those assessed in the Environmental Statement?

### **Transfer of benefit of Order [Applicant's draft]**

**34.**—(1) The undertaker with the consent of the Secretary of State may—

(a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights as may be agreed between the undertaker and the transferee; or

(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 (including the deemed marine licences) and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3) includes references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is not required for a transfer or grant for an agreed period of the benefit of any of the provisions (and any related statutory rights) relating to works nos. 1, 2 or 3 from one undertaker to another or of any of the provisions (and any related statutory rights) relating to works nos. 4 to 12 to another body licensed under section 6 of the 1989 Act.

(5) Not later than 21 days after a transfer or grant under paragraph (1) and (4) the undertaker must give notice to the MMO and/or local planning authority if such transfer or grant relates to the exercise of powers in the area of their jurisdiction.

(6) A notice given under paragraph (5) must be in writing and must state the name and address of the person to whom the benefit of the powers has been transferred or granted.

## 2.7 Certification

### **Certification of plans etc**

**39.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the land plans;
- (b) the **offshore and onshore** works plans;
- (c) the environmental statement; and
- (d) any other plans or documents referred to in this Order 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.

### **Authorised works**

#### *2.8 Aids to navigation – notification of Trinity House and Marine Management Organisation (MMO)*

DC25 (a) Has agreement been reached between the applicant and MMO as to the replacement of 'reasonably practical' with specified time-scales for Schedule H, Part 2, Conditions 6A (e) and 12(1)(a)?

(b) If not, what is the MMO's current preference for time-scales to be specified?

### **Requirements**

#### *2.9 Requirement 5*

To move to Schedule H as requested by MMO?

#### *2.10 Tailpiece requirements*

**6.** Where any Requirement specifies "unless otherwise approved in writing" by the relevant planning authority, or "unless otherwise agreed in writing" with the relevant planning authority, then such approval or agreement must not be given unless it has been demonstrated to the relevant planning authority that the approval or agreement sought –

(a) is agreed by Natural England or the Environment Agency as appropriate as not to be likely to materially worsen the impacts assessed in the Environmental Statement, including any supplementary information produced prior to consent being granted to support the Environmental Statement; and

(b) is within the red-line boundary of the works constituting the scheme, and the limits of deviation where such apply; and

(c) does not constitute a material change to the scheme as consented.

### *2.11 Safeguards for local planning authorities*

#### **Procedure in relation to approvals etc under the Requirements**

**7.** Where an application is made to the relevant planning authority for any consent, agreement or approval required by any of the Requirements, the following provisions apply in respect of that application as they would apply if the consent, agreement or approval so required was required by a condition imposed on a grant of planning permission—

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

### *2.12 Environmental Management Plan*

DC23; The proposed Environmental Management Plan (EMP) as set out in Requirement 9(1) needs only to 'reflect [...] the survey results and ecological mitigation measures included in the environmental statement.'

Furthermore it is currently subject to a tailpiece requirement [Requirement 9(2)] that lacks specificity as to the scope of any possible variation or the criteria against which the variation might be agreed.

Would the applicant please produce for discussion and consideration an alternative formulation for this Requirement that –

(a) Is clearer as to the specific objectives that the EMP must achieve, and how they are referenced from the Environmental Statement and any possible supplementary environmental information;

(b) Is clearer as to the permissible scope of any variation and the criteria against which such variation would be permissible?

### *2.13 Ecological Management Plan*

#### **Ecological management plan above mean low water level**

**9.—(1)** No part of the authorised development above MLWS is to commence within the area of a local planning authority until a written ecological management plan relating to the land above MLWS and reflecting the survey results and ecological mitigation measures included in the environmental statement, after consultation with the Environment Agency and Natural England, has been submitted to and approved by the local planning authority [in consultation with Natural England](#). [Applicant's amendment]

(2) Where any part of the ecological management plan relates to land that is below MHWS, or to impacts that might affect such land, the consultation shall include the Marine Management Organisation.

(3) The ecological management plan must include –

(a) an implementation timetable, including proposals for the timing of any works which may impact on ecological receptors;

(b) appropriate working practices to be adopted to mitigate impacts on ecological receptors, including fencing to exclude workmen from potential nesting areas;

(c) proposals for the creation, management and monitoring of habitat; and

(d) proposals for record taking and reporting to the relevant planning authority.

(4) No on-site vegetation clearance or demolition works may occur within the period March to August (inclusive) of any year unless a suitably qualified ecologist has first undertaken a checking survey immediately prior to clearance or demolition and confirms that no active wild bird nests are present and a report of his findings has been provided to and agreed with the relevant planning authority. The authorised development must thereafter be carried out fully in accordance with the recommendations of the submitted report.

(5) The ecological management plan must include an implementation timetable for the ecological mitigation and enhancement.

(6) The ecological management plan must be carried out as approved unless otherwise agreed in writing by the local planning authority.

#### *2.14 Code of Construction Practice*

##### **Code of Construction Practice**

**10.**—(1) No part of the authorised development above MLWS is to commence within the area of a local planning authority until a code of construction practice relating to the works authorised above MLWS **substantially** based on the draft code of construction practice contained in volume 4 of the Environmental Statement has been submitted to and approved by the local planning authority.

(2) The code of construction practice must deal in particular with —

(a) lighting during construction;

(b) construction noise and vibration management;

- (c) air quality, including dust management;
  - (d) sustainable waste management in a site waste management plan;
  - (e) traffic management and materials storage on site;
  - (f) water management (surface water and groundwater) including consideration of the principles in paragraphs ... of the environmental statement;
  - (g) the identification of commissioning operations which may generate noise and how they will be notified to the relevant planning authority and to local residents;
  - (h) maintenance of relevant equipment in good working order and its being fitted with the appropriate silencers, mufflers or acoustic covers where applicable so as to reduce noise;
  - (i) the location of and screening of stationary noise sources (including demonstrating their location being as far away as reasonably possible from nearby residential properties) and where necessary the location of acoustic barriers to shield such noise sources;
  - (j) the movement of vehicles to and from the construction site so as to minimise noise;
  - (k) the supervision of employees to secure compliance with the noise control measures adopted;
  - (l) procedures and activities to prevent and control spillage of oil, chemicals and other potentially harmful liquids in accordance with paragraphs ... of the environmental statement;
  - (m) storage of materials in accordance with paragraphs ... of the environmental statement;
  - (n) health and safety procedures in accordance with paragraphs ... of the environmental statement; and
  - (o) the location, design and timing for erecting a board fence to reduce the potential for visual impacts during construction.
- (3) All remediation, construction and commissioning works shall be undertaken in accordance with the code of construction practice and the ecological management plan.

(4) The operation and maintenance of the authorised development must be undertaken in accordance with the code of construction practice and the ecological management plan or any variation or replacement thereof previously approved by the relevant planning authority.

### *2.15 Requirement 20*

MMO wishes to see this removed –

(i) in its entirety?

(ii) or specifically in relation to powers to 'reconstruct or replace' under 20(1) and 20(2)?

#### **Reconstruction etc**

**20.**—(1) Before exercising the power to reconstruct or replace any of works nos. 1 to 6, the undertaker must submit plans for the carrying out of the works for the approval of the Secretary of State.

(2) The Secretary of State must consult with the MMO before approving plans submitted under paragraph (1).

(3) Before exercising the power to reconstruct or replace any of works nos. 7 to 10 within the area of a local planning authority the undertaker must submit plans for the carrying out of the works for the approval of the local planning authority.

(4) This requirement does not apply to the replacement from time to time of—

(a) individual structures (other than their foundations) including the replacement of wind turbine generators with another wind turbine generator of the same make and equivalent model,

(b) component parts of structures, or

(c) parts of electrical circuits,

- in the course of the repair and upkeep of the authorised project.

### *2.16 Travel plan*

#### **Travel plan – construction**

**xx.**—(1) No part of the authorised development may commence until, after consultation with the local highway authority and the Highways Agency, a travel plan for the construction workforce of the authorised development has been submitted to and approved by the relevant local planning authority.

- (2) The plan approved under sub-paragraph (1) shall include details of—
- (a) expected means of travel to and from the construction sites and any parking to be provided on sites;
  - (b) numbers of construction staff, working hours and modal split;
  - (c) work start and finish times for construction staff;
  - (d) details of the number of car parking spaces to be provided on sites and if appropriate a car park management plan;
  - (e) specification of measures to encourage sustainable travel to and from the construction site for construction staff including the use of minibuses to carry workers to and from the construction sites;
  - (f) responsibility and timescales for implementing proposed measures;
  - (g) targets for vehicle trips and modal splits;
  - (h) formal monitoring regime for those targets;
  - (i) provision for mess/canteen facilities for staff on sites; and
  - (j) consideration of off-site parking provision and a strategy for both car sharing and use of minibuses for the transportation of construction workers.
- (3) The plan approved under sub-paragraph (1) must be implemented and observed during the construction of the authorised development.

### *2.17 Construction traffic*

#### **Construction traffic routing and management plan**

**xx.** No part of the authorised development may commence until written details of a construction phase traffic management plan (TMP) to be used for the management of construction traffic is, after consultation with the local highway authority and the Highways Agency, submitted to and approved by the relevant local planning authority.

### *2.18 Workforce and supply chain*

#### **Workforce and supply chain development strategy**

**xy.**—(1) No part of the authorised development may commence until a workforce and supply chain development strategy has been submitted to and approved by the relevant local planning authorities after consultation with the Humber Local Enterprise Partnership.

(2) The strategy approved under sub-paragraph (1) must include details of—

- (a) proposals for [local] advertising of employment and supply chain opportunities in the construction of the authorised development;
  - (b) proposals for the undertaker to provide outreach employment presentations during the period of construction of the authorised development at appropriate frequencies and locations within the area of the River Humber;
  - (c) proposals for [local] advertising of employment and supply chain opportunities throughout the operation of the authorised development, which must also include a proposal for local advertising of employment and supply chain opportunities at least six months prior to the commissioning of the authorised development;
  - (d) proposals for offering a minimum of x apprenticeships, each for a period of up to three years, to personnel residing in the River Humber area;
  - (e) proposals for offering national vocational qualifications, or equivalent, for a period of up to three years, to personnel residing in the River Humber area and already employed, directly or indirectly, in the construction of the authorised development; and
  - (f) proposals for the undertaker to provide information on the operation of the strategy, once implemented, to any community liaison group created by the undertaker for the purposes of keeping the local community informed of matters relating to the operation of the authorised development.
- (3) The approved workforce and supply chain development strategy must be implemented and maintained during the construction and operation of the authorised development.

## 2.19 *Deemed Marine Licences*

Update from MMO and applicant on outstanding concerns.

### **3. Any other matters**

#### **4. Further work**

##### 4.1 Written proofs of oral submissions

Note: This agenda is indicative and not binding. It has been written to assist any parties who wish to attend by providing prior notice of matters to be discussed.