



The Planning Inspectorate

Meeting Note

File reference	EN010033 - Hornsea Offshore Wind Farm Project 1 and 2
Status	Final
Author	John Pingstone

Meeting with	SMart Wind Ltd
Meeting date	22 March 2013
Attendees (Planning Inspectorate)	Jessica Potter (Principal Case Manager) Sarah Green (Lawyer) David Price (EIA Manager) Richard Price (Case Officer) John Pingstone (Assistant Case Officer) Jan Bessell (Pre-application Examining Inspector)
Attendees (non Planning Inspectorate)	Chris Jenner (SMart Wind Ltd) Patricia Hawthorn (Shepherd and Wedderburn LLP) Paul Irving (Winckworth Sherwood) Pernille Hermansen (DONG Energy) Penny Pickett (SMart Wind Ltd) Barry Hopkins (SMart Wind Ltd)
Location	Temple Quay House, Bristol

Meeting purpose	To discuss the emerging applications for the proposed Hornsea Offshore Wind Farm (Zone 4) – projects One and Two
------------------------	---

Summary of key points discussed and advice given	<p>The Planning Inspectorate explained its openness policy and the commitment to publishing any advice under Section 51 of the Planning Act 2008 (the Act). It was confirmed that the Inspectorate is unable to give legal advice on which developers or others can rely and that developers should seek their own legal advice. Confirmation was also given that the pre-application Examining Inspector would not be appointed as the Examining Authority should an application for a Development Consent Order (DCO) be submitted for 'acceptance'.</p> <p>Hornsea Project One Update</p> <p>SMart Wind Ltd (SWL) gave a presentation that provided a general project update (please see separate attachment). The main points were:</p> <ul style="list-style-type: none">• Turbine details have remained unchanged
---	--

- HVAC and HVDC remain in the draft development consent order (DCO) as options for export to the grid (only one will be constructed)
- There has been a maintenance visit to the meteorological mast. It is noted that wind measurement data may be incomplete for a 3 to 4 week period, but that there are 3 separate systems that backup this data including LIDAR.
- Bird and Marine Mammal surveys have been completed, gathering data over the course of 2 years.
- No further geotechnical or potting surveys are planned
- Stakeholder meetings and engagement are ongoing.

Consultation

SWL gave an overview of their progress on consultation for Hornsea Project One.

- There have been 4 phases of consultation from 15 March 2011 onwards
- 27 public events
- 250 people attended events at phase 4. It was pointed out that many were asking specific questions regarding the detail of the proposal.
- 65 s42 responses and 32 s47 responses were received in phase 4.
- 42 days were given on all phases (28 days being the statutory period)

It was pointed out that no response has been received from North Lincolnshire Council but that discussions with Planning Officers at the Council had suggested that they are satisfied with the proposals. The Inspectorate advised that SWL may wish to seek views in writing or document any agreement with the Council within its Consultation Report.

SWL stated that the documents that were consulted upon consisted of 8,500 pages. The Inspectorate suggested that this was a considerable quantity of documentation and enquired whether this had caused difficulties for members of the public. SWL said that they had had regard to this issue by clearly signposting their documentation and attempting to customize to suit the intended audience.

The Inspectorate asked whether the Coal Authority had raised any mineral interests. SWL said that there were no mineral interests and that the Coal Authority do not own any affected land nor are they in the Book of Reference, but had been consulted as they are a prescribed consultee.

The Inspectorate queried whether the Ministry of Defence (MoD) had responded to the consultation. SWL confirmed that they had

responded in writing and had raised no objection. The Inspectorate pointed out that the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are in the process of being amended to include the MoD as a prescribed consultee for offshore wind farms.

SWL reported that they are expecting a late response from the Eastern IFCA. The Inspectorate pointed out that the experience on other projects has been that fishing interests are sometimes hard to reach and may only become known at the relevant representations stage.

SWL confirmed that Marine Scotland had been consulted but queried the need to consult with the Scottish Executive (SE) and Scottish Natural Heritage (SNH). The Inspectorate pointed out that the Regulation 9 (of the EIA regulations) list compiled by PINS at the scoping stage is a snapshot of that time and should not be relied upon by developers for the purposes of their s42 consultation. The Inspectorate advised that since the draft Habitats Regulations Assessment (HRA) report had identified potentially affected sites in Scotland, SWL should give serious consideration to also consulting SE and SNH at the pre-application stage. SWL said that they were happy to consider this advice.

Meetings have been held with the Statutory Nature Conservation Bodies (SNCBs) such as JNCC and Natural England who have provided advice on the draft HRA report.

SWL confirmed that they were on track to submit the application to the Inspectorate by 19 June 2013.

Possible phasing of project one construction

SWL discussed the overall project timetable, focussing on two possible options for the construction and commissioning stage.

The impact of these options was discussed, specifically regarding how they should be assessed in the ES. SWL pointed out that the impact would vary depending on the receptor and that the 'worst case' would need to be assessed separately for each. SWL pointed out that they have been working with Natural England and that NE is content that proper assessment has been carried out.

The Inspectorate pointed out that they would also need to consider whether each approach had been assessed with regard to what has been allowed in the DCO and that there may be a need for an overall control mechanism in the DCO to ensure that the constructed project falls within the development assessed within the ES. For example, SWL may wish to consider whether the DCO requirements need to take timing into account.

Hornsea Project Two Update

SWL gave an overview of project 2:

- The proposed offshore order limits are immediately adjacent to the order limits of project 1
- They use the same cable route (cables running parallel to each other)
- The capacity is expected to be up to 1.8GW with up to 360 turbines currently possible
- HVAC and HVDC remain as transmission options
- Two phases of consultation will be carried out, the first of which occurred between January and March 2013 and the second of which is planned for Q3 2013.
- There is no common infrastructure between projects
- There are separate grid connection agreements

SWL anticipates submission of the application in late 2013 or early 2014. The Inspectorate pointed out that the intended submission date of 20 December 2013 may cause difficulties in particular for Local Authorities over the Christmas period, in terms of their ability to respond to our adequacy of consultation deadline which falls 14 days after the submission date.

Cumulative Impact Assessment

SWL discussed their approach to cumulative impact assessment. They intend to take a 3-tiered approach which can be summarised as:

1. Project 1 with built projects and projects under construction
2. Above plus projects consented but not implemented
3. Above plus projects on PINS' register of projects.

The Inspectorate discussed the different approaches that need to be taken in regard to HRA and EIA. Cumulative Impact Assessment in regard to the EIA duties should have regard to the project as a whole. In combination assessment in regard to HRA is focussed on specific sites.

The Inspectorate queried whether, in assessing the cumulative impact of other projects, SWL had had regard to the terms of the consent and mitigation rather than just what has been said in the Environmental Statement. SWL said that they had always assessed on a worst case basis and were therefore very precautionary.

The Inspectorate pointed out that in regard to the tiered approach to CIA it may not be necessary to take a strongly precautionary approach in regard to projects that have been built, as the

impacts should be known and hence it is possible that the affects are less than the worst-case that was assessed.

The Inspectorate queried the extent to which there was consensus with consultation bodies in relation to the information to inform Habitat Regulations Assessment (HRA). SWL confirmed that discussions were ongoing with consultation bodies in relation to the impacts on birds and the information to inform an appropriate assessment. SWL confirmed that a consensus has not been reached at this time.

The Inspectorate pointed out that SWL would need to consider whether they had sufficient information to enable the Competent Authority to make an appropriate assessment as this would be first looked at in general at acceptance. The Inspectorate pointed out that it may be of value to consider the findings in other relevant appropriate assessments including the Kentish Flats Extension decision. SWL confirmed that their experts were aware of the Kentish Flats Extension decision and that they would look at it in detail.

Transboundary Consultation

SWL explained that they have consulted several EU member states including Dutch, German, Belgian, French and Danish environmental ministries. Meetings have been held with German (December 2012) and Dutch (March 2013) ministries and they are keen to engage.

The Inspectorate queried whether any engagement had taken place with Norway. SWL confirmed that they had been consulted but that no response had been received.

The Inspectorate confirmed it is carrying out transboundary consultation in line with its duty under Regulation 24 of the Infrastructure Planning (EIA) Regulations 2009. The deadline for states to notify of their interest in the project is 24 April 2013. The Inspectorate advised that even if no response is received the ExA may choose to consult further during the examination. This is an ongoing duty, even whilst the recommendation is with the Secretary of State.

In discussion it emerged that the Inspectorate's letter to SWL confirming the outcome of its transboundary screening had not reached SWL. The Inspectorate apologised and agreed to resend the transboundary consultation letter to SWL.

Draft Document Review

SWL had provided a number of draft documents to the Inspectorate ahead of the meeting which were discussed in turn.

Draft Development Consent Order

The Inspectorate raised the issue of the definition of 'maintain', which has been the subject of representations from the MMO on other offshore wind projects. SWL were aware of these issues and were taking them into account in their drafting.

It was suggested by the Inspectorate that SWL should give consideration to their use of the phrase 'construction sites outside permanent limits of deviation' as this could be construed as permitting development outside the order limits. It was suggested that this could be highlighted and explained in the explanatory memorandum.

In the definition of authorised development it is stated that the application is for three Nationally Significant Infrastructure Projects whereas the DCO as drafted may permit fewer projects than this to be constructed. This could potentially be confusing and would benefit from clarification.

It was also pointed out that the description of Work no3 does not cross-reference Works no1 and no2. This means that it is unclear that work no3 might not be built because in the situation where Works no1 and 2 are maximised Work no3 would not be necessary. SWL need to consider whether as drafted the project is sufficiently clearly defined.

The Inspectorate pointed out that in the explanatory memorandum the ES is listed as a certified document, but it is not contained in the certification list within the DCO. Also that Work 10 refers to an electrical substation, but this term is not defined.

Protective provisions were discussed. It was suggested by the Inspectorate that Network Rail or the Highways Agency may benefit from being involved. If it is considered that protective provisions may be required it would be beneficial to add them to the DCO before submission.

It is also worth considering the depth to which land will be compulsorily acquired, for example in relation to the A160 crossing as this will affect the rights sought.

SWL stated that they had not yet determined whether any applications under s127 of the PA 2008 would be necessary. The Inspectorate encourages dialogue with affected statutory undertakers as s127 applications can prove contentious when there is a lack of engagement and forewarning. In addition SWL was encouraged to do a full audit of s127-139 of the PA 2008 although to be mindful of likely legislative changes that might be brought about by the Growth and Infrastructure Bill (now Act).

In regards to Work 11, SWL presented a photograph of the cable as it entered a substation. It was suggested by SWL that this Work could benefit from the Overhead Lines (Exemption) Regulations as set out at 16(3)(c) of the PA 2008. The Inspectorate pointed out that SWL would need to fully explain their interpretation within the Explanatory Memorandum.

Deemed Marine Licence

The Inspectorate advised that SWL discuss with the Marine Management Organisation (MMO) the draft Deemed Marine Licence, particularly in regard to their intentions surrounding the named license holder and transfer of benefit. The Inspectorate pointed out that as the MMO will administer the DML it is preferable to seek agreement on these matters.

SWL stated that it is their intention to have two separate DMLs with generation and transmission assets covered separately and that there is potential overlap between works 1-3 and 4-6. It was pointed out that SWL would need to ensure that their DCO drafting is clear in this regard.

SWL stated that it does not anticipate any additional Marine Licences to be required over and above what is included within the DCO application.

Plans

The Inspectorate reviewed SWL's draft plans. Key points were:

- If a smaller scale is used than stated in the APFP regulations, it is important to explain within the Explanatory Memorandum why it was used and to ensure it is fit for purpose
- There is a lack of key plans (other than in the legend)

It was also questioned whether any additional plans would be produced between now and submission. SWL stated that they intend to produce an indicative plan of the substation (work no10) which the Inspectorate welcomed.

Consultation Report

The Inspectorate provided feedback on the consultation report, key points were:

- It would be helpful if SWL could provide a list of s42 consultees prior to submission to enable the Inspectorate to advise of any potential omissions.
- The report lists local authorities, but it would be helpful if they could be broken down into A,B,C and D authorities according to s43(2) of the PA 2008, as we are required to

consult B and C authorities for adequacy of consultation representations.

- There is no list of s44 consultees. This should be provided and cross-referenced with the Book of Reference
- Concerning s50 of the PA 2008, regard should be had to the DCLG Pre-application Consultation Guidance, which was revised in January 2013. This is a relevant test at acceptance. As guidance may be revised at any point, this will have to be considered by SWL right up to the point of submission.

HRA report

The Inspectorate noted that the HRA assessment as currently drafted is divided into separate offshore and onshore reports and queried whether the project as a whole had been adequately considered as the appropriate assessment would need to look at the project as a whole. It was also pointed out that other previous projects had commonly presented a single assessment. The Inspectorate also said that they would need to produce a single Report on the Implications for European Sites (RIES) and that it was expected that applicants now provide the initial draft of the RIES as part of the HRA information supporting any application.

SWL said that they had explained the scope of each document and cross-referenced the documents, but that they would consider the merits of their approach. SWL agreed to circulate a revised version of its HRA matrices for the Inspectorate to consider whether this approach will be workable for the purposes of examination and decision making by the competent authority.

Compensation land was discussed. SWL queried how compensation land would be treated if it is not implemented. The Inspectorate pointed out that the National Planning Policy Framework states that compensation land should be given the same protection as a European site.

Book of Reference

The Inspectorate discussed SWL's draft Book of Reference. In regard to 'persons unknown' the applicant is not required to list these in the Book of Reference under the APFP regulations. The inclusion of these parties should be explained and discussed.

SWL stated that they are currently working on the Statement of Reasons and Funding Statement and that draft documents would be provided to the Inspectorate in due course.

The Inspectorate queried whether the applicant intended to use any s106 agreements. SWL said that they were contemplating it but had made no firm decision. It was pointed out that it is not the Inspectorate's role to arbitrate between parties in regard to these

agreements.

Interface with Other PINS Projects

A letter has been sent from SWL to C.GEN, and supplied to the Inspectorate, regarding a possible conflict with the North Killingholme Power Station project. It was explained that C.GEN appear to be seeking compulsory acquisition rights over a substantial area of land required by SWL for its grid connection route. It was SWL's belief that C.GEN has not had regard to the Hornsea project in finalising the proposed project and had therefore failed in their duty under s49 of the PA 2008. In addition SWL had requested that C.GEN delay the submission of their project in order that discussions could take place.

The Inspectorate queried whether the option agreement that SWL have over the land that C.GEN wish to acquire is registered with the Land Registry; SWL confirmed that it was. It was also confirmed that C.GEN had indicated to the Inspectorate that they intended to submit their DCO application to the Inspectorate on Monday 25 March 2013. SWL explained that they had discussed this situation with North Lincolnshire Council who will be invited to submit an adequacy of consultation representation for both Hornsea Project One and the North Killingholme project.

DECC 27th round Appropriate Assessment for oil and gas

SWL discussed the DECC 27th round Appropriate Assessment for oil and gas. DECC have concluded that they are minded to award a license over land where the Hornsea project will be constructed if approved. SWL have been engaging positively with oil and gas operators in the area. The Inspectorate suggested that they should consider protective provisions within the DCO. SWL pointed out that this would be difficult as it is not yet known who the license will be awarded to.

Decommissioning Impacts

SWL stated that they have set out a full discussion of decommissioning impacts in a dedicated section of the ES. It was pointed out that there is a possible problem with a 50 year lease being awarded, but only a 25 year impact assessment. It was suggested that SWL need to assess the maximum extent and should take into account relevant caselaw such as R (on the application of Barker) v Bromley London Borough Council 2006.

EPS Licenses

The Inspectorate queried whether SWL would be applying for any European Protected Species licenses. SWL stated that they are currently in discussion with the SNCBs and drafting a possible application. The Inspectorate suggested that it would be

	<p>helpful to have a 'position of comfort' on this issue and that the greater the certainty that could be obtained the better.</p> <p><u>Outreach</u></p> <p>SWL queried whether the Inspectorate intended to conduct any further outreach events in the local community. The Inspectorate stated that none was planned, but that the need for this remained under consideration.</p>
--	---

Specific decisions/ follow up required?	<ul style="list-style-type: none"> • The Inspectorate to resend the Transboundary Consultation letter to SWL. • SWL to provide a further revised version of the draft DCO for consideration by the Inspectorate. • SWL to provide to the Inspectorate a copy of the draft Funding Statement and Statement of Reasons when available. Inspectorate to provide comments. • SWL to circulate a revised version of its HRA matrices for the Inspectorate to consider whether this approach will be workable for the purposes of examination and decision making by the competent authority. • SWL/Inspectorate to meet for a final pre-application meeting for Hornsea Project One in May 2013.
--	--

Circulation List	All attendees
-------------------------	---------------