



3/18 Eagle Wing  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Customer Services: 0303 444 5000  
e-mail: [Hornsea2@pins.gsi.gov.uk](mailto:Hornsea2@pins.gsi.gov.uk)

---

Your Ref:

Our Ref: EN010053

Date: 26 November 2015

---

Dear Sir/Madam

**Planning Act (2008) as amended s 89(3), and the Infrastructure and Planning (Examination Procedure) Rules 2010 (as amended)-Procedural Decision and Rule 17 and Rule 8(3)**

**Application by Smart Wind Ltd for an Order Granting Development Consent for Hornsea Offshore Wind Farm (Zone 4) - Project Two**

**Request for further information and procedural decision**

As the lead member of the Panel of Examining Inspectors (Panel), I am writing to all the interested parties following the hearings and subsequent deadline, to seek further information on the items listed below, and to make a procedural decision on changes requested by the Applicant. Should any party deem that these questions have been answered through Deadline 6 submissions then the Panel request that this is highlighted in responses and not repeated unnecessarily.

The Panel has considered a request by E.ON E&P Ltd (E.ON) received via email on 19 November 2015 (OD-003) to hold a further hearing in relation to the issues between the Applicant and E.ON. To enable full consideration of this matter and fairness to all parties, the Case Manager sought the views of the Applicant (OD-004).

Having considered the information in these submissions, in addition to the submission of documents for Deadline 5, the Panel welcomes the further information provided by both the Applicant and E.ON on relevant issues and on possible ways forward, and believes that this provides a clear basis for progress on outstanding issues without the need for an oral hearing. The Panel emphasises again that the examination is primarily a written process, and our decision is not to hold a further hearing. We have set out in this Rule 17 letter what further information we require from the Applicant and E.ON on the issues between them; we also include questions on other issues. We

encourage all parties to attempt to reach agreement and make any final submissions on how they suggest that the Panel makes recommendations to the Secretary of State by Deadline 7, as the Panel may close the examination at any time after that date.

### Request for further information

The Panel has set out a number of questions below for any party to answer. The deadline for responses is Deadline 7, 10 December 2015.

No.	Item	For attention of
1	Please provide confirmation or otherwise that the removal of the 5MW Wind Turbine Generator (WTG) option will reduce the maximum number of offshore wind turbines from 360 to 300?	Applicant
2	Please provide details of the underpinning assessment of the potential implications for offshore ornithology of the removal of the 5MW WTG option and an increase in hub height of 3.5m.	Applicant
3	Please clarify whether there are there any other implications of the removal of the 5MW WTG option and an increase in hub height of 3.5m. Your response should, as a minimum, include reference to the area of the seabed needed for the reduced number of turbines and the operations proposed by E.ON E&P Ltd, and to navigation routes.	Applicant
4	The Applicant is requested to submit any updates for the Development Consent Order (DCO) to reflect the removal of the 5MW WTG option and an increase in hub height of 3.5m.	Applicant
5	Please provide an update on progress on those Protective Provisions which were not agreed by Deadline 5. In the event that agreement is not reached, each party should set out its views on how the issues should be taken forward for consideration by the Examining Authority (ExA) in making its recommendation to the Secretary of State.	Applicant and Statutory Undertakers
6	Please provide an update on the negotiations between ConocoPhillips and the Applicant. In the event that agreement is not reached, each party should set out its views on how the issues should be taken forward for consideration by the ExA.	ConocoPhillips, Applicant

7	<p>The ExA welcomes the willingness by E.ON E&amp;P Ltd and the Applicant to adopt a pragmatic approach, as recommended in National Policy Statement EN-3, to resolve the issue of co-existence between Hornsea Project 2 and E.ON E&amp;P Ltd interests in North Sea Block 48/3. For the Applicant this is set out in REP5-008, paras 4.28-4.30. E.ON's approach is set out in REP5-034, paras 1.56-1.66. The ExA also notes the draft Protective Provisions, and especially Figure 2, provided by E.ON in Appendix 2 of the same reference.</p> <p>In this context, and given, for example, (i) the small percentage of the Hornsea Project 2 site which E.ON state that they need for co-existence with the Hornsea Project 2 project; (ii) the possibilities of directional drilling; and (iii) the implications of the removal of the 5MW WTG option (see 3 above), the ExA believes that there appears to be clear scope for co-existence. The ExA strongly encourages the two parties to find common ground as soon as possible before the close of this examination. This may be expressed in a Statement of Common Ground and/or in Protective Provisions.</p> <p>In the event that agreement is not reached, each party should set out its views on how the issues should be taken forward for consideration by the ExA in making its recommendation to the Secretary of State.</p>	E.ON E&P Ltd, Applicant
8	<p>The ExA would welcome the views of the Applicant, E.ON E&amp;P Ltd and the Marine Management Organisation (MMO) on how the policies within the Eastern Inshore and Offshore Marine Plan (particularly the OG and WIND policies and GOV3) are secured by the proposed Hornsea Project 2 with respect to potentially competing/conflicting developments of wind energy and oil and gas exploitation.</p>	E.ON E&P Ltd, Applicant, MMO
9	<p>Can the Applicant please submit into the examination a copy of the <i>Journal Of Applied Ecology</i> article by Cleasby et al (2015) which was discussed in the Issue Specific Hearing on 27 October 2015?</p>	Applicant
10	<p>Will Natural England (NE) please provide clarification of the reasons for the differences in their assessment of project impacts, in combination, on kittiwakes, between Hornsea Project 1 and Hornsea Project 2?</p>	NE

<p><b>11</b></p>	<p>The views are sought of NE and the Applicant on the submission by the Wildlife Trusts (TWT) for Deadline 5 in relation to marine mammals and the potential Southern North Sea draft Special Area for Conservation (dSAC) for harbour porpoise; in particular TWT suggestions that:</p> <ul style="list-style-type: none"> <li>• the Applicant’s addendum to its Habitat Regulation Assessment (HRA), in relation to consideration of the dSAC is not able to conclude ‘no adverse impact on integrity’;</li> <li>• it is fundamentally incorrect to assess the effect on <u>site</u> integrity by predicting whether the impact will affect the whole North Sea population;</li> <li>• there is enough doubt and uncertainty as to the population consequences of disturbance at either a site or population level; and</li> <li>• that a high level of impact would result from the scenario of pile driving with no guaranteed mitigation of reduction of noise at source.</li> </ul>	<p>NE, Applicant, any other relevant parties</p>
------------------	--	--

### Acceptance of change request

At Deadline 3, on 24 September 2015, the Applicant made various changes in relation to the area of land required for the project. These changes resulted in reductions in the extent of the Order land. The changes related to;

- a) removal of plot 227
- b) the reduction of plot 226
- c) the removal of plots 382 to 387 (inclusive) and 389 to 391 (inclusive)
- d) the reduction in size of plot 506 and proportionate increase to plot 505 and
- e) reduction in Order limits to remove one of the Project’s export cable route options within the Hornsea Project 1 wind farm array, this reduced the amount of Crown land within the Order limits

The Applicant updated the relevant application documents to reflect these changes. The consequential changes were set out by the Applicant in REP3-027.

The Panel has examined these changes at subsequent hearings (EV-035) through its second round of written questions (Question G10 PD-016) and has formed a view that acceptance of these changes would not materially change the application. Furthermore, acceptance would not deprive those who should have been consulted on the changed development of the opportunity of such consultation. The ‘Wheatcroft Principles’, and the other considerations in paragraph 113 of the revised guidance, are therefore satisfied<sup>1</sup>. In respect of the reductions, no physical changes to the works themselves are proposed. The various changes taken together are not of such a

---

<sup>1</sup> Planning Act 2008: Guidance for the examination of applications for development consent, DCLG March 2015

degree that they constitute a materially different project as envisaged by paragraph 110 of the revised guidance.

### **Publication of documentation**

The Panel has today taken the decision not to issue a draft Development Consent Order for consultation. The Panel is seeking views on the Applicant's most recent DCO (REP5-006) version 7.

The Panel notes, as set out in the request for further information above, that a change to the DCO is required in relation to the size of turbines but otherwise suggests no further changes at this stage.

Therefore the Panel is requesting views of all interested parties on REP5-006.

The Panel has today issued the Report on the Implications for European Sites (RIES). A link to this document can be found in the banner of the project webpage. Comments on these documents are due by **Deadline 7, 10 December 2015**. Please ensure that any comments on the RIES are clearly separated from other submissions.

### **Submission of responses**

All documents are to be submitted on or before **Deadline 7, 10 December 2015**. This is the last deadline in the examination. As such, the Panel may close the examination at any point after this date before 16 December 2015. Therefore it is imperative that all final submissions are received by Deadline 7. We request that interested parties send, where practicable, electronic copies of their submissions as email attachments, to hornsea2@pins.gsi.gov.uk on or before the applicable deadline.

Yours faithfully,

*John Glasson*

**Prof. John Glasson, Lead Member of the Panel of Examining Inspectors**

Annex A – Amended Examination Timetable

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**  
**Amended Examination Timetable**

<b>Item</b>	<b>Matters</b>	<b>Due Dates</b>
16	<b>Deadline 7</b> Deadline for receipt of: <ul style="list-style-type: none"><li>• Comments on Applicant's DCO (REP5-006)</li><li>• Comments on RIES</li><li>• Responses to Rule 17 issued 26 November 2015</li><li>• Any other information requested by the ExA</li></ul>	<b>Thursday 10 December 2015</b>
17	The ExA is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.	<b>Wednesday 16 December 2015</b>