

**Thanet Extension Offshore Wind Farm
Agenda for the Issue Specific Hearing 5 (ISH5):
Maritime, Shipping, Navigation Safety and Recreational Sea Use Issues**

Date:	Wednesday 20 February 2019
Time:	10.00am Hearing room opens from 9.30am
Venue:	Building 500 ¹ , Discovery Park Ramsgate Road, Sandwich, CT13 9FF
Access and Parking:	For pedestrian and vehicular access , parking arrangements and the reception location, please use the attached map . Car park shown on the attached map. Public transport Bus Discovery Park, Ramsgate Road Stagecoach routes 43 and 44 5 minute walk to venue Train Ramsgate or Sandwich Stations Taxi to venue

Purpose of the Issue Specific Hearing 5 (ISH5)

ISH5 is being held for the following purposes:

- To enable the Examining Authority (ExA) to continue its inquiry into the shipping, navigation and maritime safety effects of the proposed development, in the light of oral submissions on these matters at ISH2 and written representations submitted at Deadline 1.
- To review Deadline 1 submissions on the navigation risk assessment and its relationship with the navigation risk chapter of the Environmental Statement (ES).
- To review Deadline 1 submissions requesting changes to the extent of the wind turbine generator array area.
- To provide an opportunity for the Applicant, ports, pilotage, shipping, navigation and maritime safety and rescue stakeholders to be heard on these matters.
- To enable the ExA to inquire into air navigation effects and to provide an opportunity for the Applicant and aviation stakeholders to be heard on these matters.

¹ Building 500 is adjacent to and in the same building complex as Discovery House.
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Participation, conduct and management of hearing

This is the fifth ISH to be held in this Examination. It is being held because the Examining Authority (ExA) wishes to question the Applicant about the approach that it has taken to identifying and assessing the shipping, navigation and maritime safety and air navigation effects of the proposed development.

Because a significant number of Relevant Representations (RRs) raised concerns about shipping, navigation and maritime safety effects, the ExA considered that it was necessary to undertake an initial review of the matters raised in ISH2 in December 2019, prior to the submission of written representations. An action list was published and the Applicant and ISH2 Interested Parties (IPs) provided responses at Deadline 1. Following oral submissions at ISH2, written representations and action list responses, the ExA wishes:

- to review policy compliance matters raised in Deadline 1 written representations and responses;
- to understand whether any further changes to the Application and its evidence base are proposed to address policy and factual matters raised at ISH2 and Deadline 1 and if so how such changes will be progressed;
- if necessary, how IPs and Other Persons might be provided with opportunities to view and comment on any changes; or
- if no changes are proposed, to understand the scope of matters still in dispute between the Applicant and the ISH2 IPs and upon which the ExA is being requested to adjudicate in its recommendation to the SoS.

A date has been reserved for a further ISH8 into shipping, navigation and maritime safety matters to be held on 24 April 2019 (ISH8) at which any such changes, comments on them and any additional work can be further examined if that proves to be necessary.

The ExA notes the potential effect of the proposed development on Manston Airport (should aviation services resume there) and wishes to review these and any other potential air navigation effects before the closure of the Examination.

In recognition of the particular needs of the fishing industry and community, fishing and fisheries issues (which will also include fishing related navigation and maritime safety issues) will be addressed at a separate ISH6 to be held on 20 February 2019 commencing at 6-30pm (see Agenda Papers, **Annex D**).

The business of an ISH is limited to the matters identified in the agenda. Oral submissions on other subject matters or from persons who are not IPs may only be heard at the discretion of the ExA. It is strongly preferable that any such issues arising from IPs are brought to the Open Floor Hearing (OFH) to be held on 19 February 2019 commencing at 6-30pm (see Agenda Papers, **Annex G**). There are no defined subject matters in the OFH Agenda and IPs may raise any important and relevant matter. Whilst a second OFH is reserved in April 2019, in the absence of any requests to be heard at that hearing, IPs should not assume that it will proceed.

Participation in the hearing is subject to the ExA's power to control the hearing.

Invited Participants

The following IPs are invited to attend and participate in this hearing:

- the Applicant;
- The Corporation of Trinity House;
- Estuary Services Ltd. (Winckworth Sherwood LLP);
- Mr Richard Jackson (pilotage);
- London Pilots Council;
- London Gateway Port Ltd. (LGPL) (Pinsent Masons LLP);
- Marine Management Organisation (MMO);
- the Maritime and Coastguard Agency (MCA) and the Sunk User Group;
- Ministry of Defence (MoD);
- Mr David Ninnim (shipping)
- Port of London Authority (Winckworth Sherwood LLP);
- Port of Sheerness Ltd. (Peel Ports – London Medway);
- RiverOak Strategic Partners Ltd. (Manston Airport) (Bircham Dyson Bell LLP);
- UK Chamber of Shipping;
- United Kingdom Maritime Pilots Association;
- Kent County Council;
- Dover District Council; and
- Thanet District Council.

The following Other Person (an invited participant in the Examination) is also invited to attend and participate in this hearing:

- Port of Tilbury London Ltd. (PoTLL) (Pinsent Masons LLP)

The named IPs and Other Person have been invited for the following reasons:

- As public bodies with policy and regulatory responsibilities in the marine environment, including responsibility for civil and military navigation;
- As bodies responsible for and operating ports, harbours and channels;
- As bodies with responsibility for lights and navigation aids;
- As bodies or persons delivering pilotage services;
- As bodies or persons active in or representing the shipping industry;
- As local authorities representing communities active in maritime industries and as local planning authority for the onshore proposed development and the Manston Airport area;
- As proponents and stakeholders in a proposal to recommence aviation at Manston Airport and in aviation more generally.

The ExA is conscious that not all of the named IP invitees have objected to the proposed development. However, it would be greatly assisted by the attendance and contribution of all invited bodies because it is conscious that, in busy waters, particular actions taken to respond to the concerns of one or an associated group of IPs might inadvertently affect the interests of other individual or groups of IPs. The ExA wishes to obtain an integrated understanding of the issues raised in this hearing and to assure itself that the proposed development, mitigations and any changes to it represent the best possible balance of benefit between the interests of a broad and diverse range of marine stakeholders.

Invitees are requested to contact the Planning Inspectorate by **12 February 2019** to confirm their attendance.

Further Interested Parties (IPs) who are interested in shipping, navigation and marine safety effects may attend the hearing but must contact the Planning Inspectorate by **12 February 2019** if they wish to be heard. A request to be heard should outline the items on this agenda on which they wish to speak and provide a summary outline of the issues that they wish to raise.

Further Other Persons (who are not already registered as IPs) who wish to raise shipping, navigation and marine safety effects issues may also request to participate in the Examination and to be heard, contacting the Planning Inspectorate by **12 February 2019**. A request to participate and to be heard should outline the items on this agenda on which they wish to speak and provide a summary outline of the issues that they wish to raise. The ExA has discretion about whether to hear Other Persons and the hearing will be managed in the interests of ensuring that invited persons and IPs issues are fully heard within the allotted time.

The ExA requests that invited participants and those who have requested to make oral representations attend at the appointed start time of 10.00am.

Hearing Guidance

Participants may be legally represented if they wish, but the hearing will be conducted to ensure that legal representation is not required. The Applicant, IPs and Other Persons may attend with expert advisers relevant (in the maritime field) to ports, pilotage, shipping, channels, marks, markers and lights, navigation, radio, radar and related systems and maritime safety, and (in the air navigation field) airfield and airport operations, navigation, radio, radar and related systems and air safety, but IPs and Other Persons may equally participate without expert advice if they wish.

Guidance under the Planning Act 2008 (as amended) (PA2008)² and the Infrastructure Planning (Examination Procedure) Rules 2010 provide that the ExA will probe, test and assess the evidence through direct questioning of persons making oral representations at hearings. Questioning at the hearing will be led by the ExA.

Cross-questioning is regulated by the ExA and is only seldom employed at hearings. Cross questioning of a person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure that representations are adequately tested or to ensure that a person has had a fair chance to put their case.

² 'Planning Act 2008: Guidance for the examination of applications for development consent', (DCLG March 2015).

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance-final_for_publication.pdf

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This agenda may be amended by the ExA at the start of the hearing session. Furthermore, the ExA may wish to raise matters arising from oral submissions Relevant Representations (RRs) and Written Representations (WRs), and pursue lines of inquiry in the course of the discussion which are not listed on the agenda.

The hearing will run until all the ExA is content that all matters on the agenda have been addressed.

References to Locations at Sea and Sea Zones

To assist the identification and location of matters and issues at sea relative to the existing Thanet Offshore Wind Farm and the proposed development, the ExA has prepared an annotated version of the Offshore Works Plan identifying Sea Zones around the proposed development (the 'Sea Zones Plan').

The Sea Zones Plan has been lodged in the Examination Library under reference [OD-008]. The Sea Zones Plan can be obtained from the following link:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010084/EN010084-000829-Sea%20Zones%20Plan.pdf>

Agenda

1. Welcome, introductions and arrangements for this Issue Specific Hearing 5 (ISH5)

2. Applicant's Position on ISH2 and Written Representations

The ExA will ask the Applicant about the concerns expressed and mitigations sought in ISH2 and subsequent Written Representations, with particular reference to proposals to exclude wind turbine generator array areas from the red line boundary broadly to landward of the proposed development. Does the Applicant intend to address these with proposals for its own changes to the proposed development, or does it wish to sustain a position that all of the wind turbine generator array areas shown in the submitted application remain developable?

If required, The ExA will invite discussion of any changes to the proposed development that might be sought and will consider if any additional procedural steps may be needed in the remainder of the Examination period. Views will be sought from the Applicant and IPs.

3. Policy Considerations

The ExA will ask IPs responsible for and operating any ports, harbours and channels to summarise their positions and to identify the following:

- a) To what extent is NPS Ports applicable to the proposed development?
- b) Does the policy justification for the proposed TEOW development have the effect of exerting a counter-force against the 'compelling need for additional port capacity'? If so, what weight should be accorded to that effect?
- c) Which particular provisions of NPSP might be relevant?
- d) What weight might be accorded to them?
- e) NPS EN-1 section 5.13 addresses (inter alia) 'transport' but does not refer in specific terms to maritime navigation. Are any general principles arising from that policy applicable to this application?
- f) Are the provisions of NPS EN-1 paragraph 5.13.12 relevant?
- g) In respect to NPS EN-3 paragraphs 2.6.147 to 2.6.175,
 - i. Would the proposed development 'pose unacceptable risks to navigational safety after mitigation measures have been adopted'? (2.6.147) and if so, can additional design or mitigation measures be provided to address these?
 - ii. Has there been sufficient and effective engagement between the Applicant and maritime navigation interests to 'allow [the Thanet OWFE] and navigation uses of the sea to

- successfully co-exist' (2.6.153) and if not, what additionally needs to be done?
- iii. Is the test in NPS EN-3 paragraph 2.6.161 met: is the proposed development likely to cause 'interference with the use of recognised sea lanes essential to international navigation' and if so, can the effect of this interference be removed by additional design or mitigation measures?
 - iv. Have sufficient steps been taken to avoid or minimise 'disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade'? If not, what additional steps can be taken? (2.6.162) (The question of residual effect needs to be dealt with in the April hearings.

The Applicant will be provided with a right of reply.

The ExA will invite discussion of the consequences of the policy position and seek views from the Applicant and IPs.

4. Technical Considerations: Navigation Risk Assessment (NRA)

The ExA will ask IPs responsible for and operating any ports, harbours and channels to summarise their positions and to identify the following:

- a) Was there adequate technical stakeholder engagement in the framing of the questions to be addressed by the NRA (taking account of guidance in MGN 543)?
- b) Are there discretionary elements of the NRA methodology on which expert judgment has been made by regulatory bodies, and if so what such decisions were made?
- c) Were the opinions of relevant technical experts taken sufficiently into account and was the NRA research design and assessment conclusions sufficiently conformed to their input?
- d) Seasonality – did the NRA take a sufficiently representative sample and season of shipping movements into account?
- e) Was the Pilot Transfer Bridge Simulation (PTBS) an adequate exercise for the magnitude of impact perceived in pre-app consultations?
- f) The methodological basis for findings that marine risks have been reduced as low as reasonably possible (ALARP);
- g) The basis for the relationship between risks controlled to ALARP, tolerable risks and the consistency of approaches taken in relation to navigation risk and marine safety and the assessment of risk significance in the ES more broadly;
- h) Should the assessment of ALARP and Tolerability of Risk be reviewed independently of those undertaking the NRA?

- i) If there are technical defects in the PTBS or the NRA itself, what is the minimum necessary action to rectify these and when must this be taken?

The Applicant will be provided with a right of reply.

The ExA will invite discussion of the consequences of the NRA position and seek views from the Applicant and IPs.

5. Effects on Navigation in the approaches to Thames and Medway Ports

The ExA will ask the Applicant to summarise its position on the following matters:

- a) At ISH2, the Applicant and IPs did not agree on a definition of adequate sea room in the specific context of waters west and north-west of the array and hence the judgment of a prudent master on the continued navigability by large commercial vessels of the Inshore Route (Route 4 in the NRA) and useability of the NE Spit pilot station are not agreed. Is there a reasonable prospect of technical agreement being achieved on this point?
- b) Does the Applicant agree with the characterisation of the effect of the proposed development on the use of the Inshore Route set out in the WRs of IPs at ISH2? If not, on what technical basis is the PLA/ESL WR incorrect?
- c) Does the Applicant agree with the characterisation of the effect of the proposed development on the use of the NE Spit pilot station set out in the WRs of IPs? If not, on what technical basis are these WRs incorrect?
- d) Does the Applicant agree with the characterisation of the effect of the proposed development on pilotage more generally as set out in the PLA WR? If not, on what technical basis is the PLA/ESL WR incorrect?
- e) Does the Applicant agree that an effect of the siting of the proposed development may be to make a material increase in masters decisions to avoid the Inner Channel? If not, on what technical basis is the PLA/ESL WR incorrect?
- f) Does the Applicant agree with the adoption of an additional 14.4NM / 1 hour steaming per ship as the 'cost' accrued to voyages where masters decide to avoid the Inner Channel? If not, on what technical basis is the PLA/ESL WR incorrect?

The ExA will seek comments from regulatory and service bodies including the MCA, Trinity House Lighthouse Services, the shipping industry and pilotage bodies and IPs responsible for and operating any ports, harbours and channels.

The Applicant will be provided with a right of reply.

The ExA will seek clarification of the degree to which these matters are capable of resolution in additional technical work/ Statements of Common Ground (SoCGs) or if it is being asked to adjudicate matters that cannot be agreed. If the latter position is adopted, a discussion of the need for and examination of evidence for competing position at the April hearings will be held.

6. Mitigation of Effects on Navigation and Commerce

The ExA will ask the Applicant to summarise its position and to identify the following:

- a) What is the Applicant's response to the extent of the exclusion of waters from the array area within the RLB proposed by the ISH2 IPs at Deadline 1? Is the extent of the proposed exclusion necessary? What effects would it have on project viability?
- b) If mitigation excluding waters from the array area is required, at what extent does it become material change and necessary to re-appraise and re-consult on the following submitted documents:
 - i. The NRA;
 - ii. The ES; and / or
 - iii. Any other documents...
 - iv. and how should any changes to these be brought forward?

The ExA will seek comments from regulatory and service IPs including the MCA, ports and harbours, pilotage bodies and Trinity House.

7. Any Other Marine and Related Considerations

The ExA may raise any other consequential topics bearing on Shipping and Navigation topics as is expedient, having regard to the readiness of the persons present to address such matters, including but not limited to:

- a) Economic and employment effects on marine industries.
- b) Social and economic and employment effects on marine communities.

The ExA may extend an opportunity for the Applicant, IPs and Other Persons to raise matters relevant to Shipping and Navigation topics that they consider it should examine.

If such matters are raised, the Applicant will be provided with a right of reply.

8. Any Aviation Considerations

The ExA will raise Air Navigation, including but not limited to:

- a) Possible operational effects on Manston Airport if air services were to be resumed.
- b) Possible air navigation effects on civil and military aviation.

The ExA will extend an opportunity for the Applicant, IPs and Other Persons to raise matters relevant to these topics.

If such matters are raised, the Applicant will be provided with a right of reply.

9. Procedural Decisions (If Required)

The ExA will review whether there is any need for procedural decisions about additional information or any other matter arising from Agenda items 2 – 7.

Submissions will be sought from the Applicant and any relevant IPs or Other Persons before determining whether a decision may be required, what it might address and whether particular timescales for performance are required.

If the ExA determines to make any procedural decisions it may make these decisions orally (subject to confirmation in writing) or may reserve its decisions to be made in writing after the closure of the hearing.

10. Review of issues and actions arising

To the extent that matters arise that are not addressed in any procedural decisions, the ExA will address how any actions placed on the Applicant, IPs or Other Persons are to be met and consider the approaches to be taken in further hearings, in the light of issues raised in this hearing. A written action list will be published if required.

11. Next steps

12. Closure of the hearing