

INFRASTRUCTURE PLANNING
THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010
THE THANET EXTENSION OFFSHORE WIND FARM ORDER

Responses to Action Points from ISH5 submitted on behalf of the Port of London Authority and Estuary Services Limited

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	Action	Party	Response
1	<p>Policy Considerations</p> <p>All IPs to provide full and specific details of what they consider to be the important and relevant policy considerations to this case.</p>	All interested parties	<p>The following paragraphs of the Renewable Energy Infrastructure NPS are important and relevant to the EXA’s consideration of the Application:</p> <p>“Offshore Wind Farm Impacts – Navigation and shipping</p> <p>Introduction</p> <p>2.6.147 Offshore wind farms will occupy an area of the sea and therefore it is inevitable that there will be some impact on navigation in and around the area of the site. This is relevant to both commercial and recreational users of the sea who may be affected by disruption or economic loss as a result of the proposed offshore wind farm. To ensure safety of shipping, it is Government policy that wind farms should not be consented where they would pose unacceptable risks to navigational safety after mitigation measures have been adopted.</p> <p>2.6.148 Impacts on navigation can arise from the wind farm or other infrastructure and equipment creating a physical barrier during construction and operation. The presence of the wind turbines can also have impacts on communication and shipborne and shore-based radar systems.</p> <p>2.6.149 Further impacts may arise from the granting of safety zones. Applicants may seek declaration of safety zones around wind turbines and other infrastructure, although these might not be</p>

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			<p>applied for until after consent for the wind farm has been granted. The declaration of a safety zone excludes or restricts activities within the defined sea areas.</p> <p>...</p> <p>2.6.162 The IPC should be satisfied that the site selection has been made with a view to avoiding or minimising 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, lifeline ferries²⁹ and recreational users of the sea. Where a proposed development is likely to affect major commercial navigation routes, for instance by causing appreciably longer transit times, the IPC should give these adverse effects substantial weight in its decision making. There may, however, be some situations where reorganisation of traffic activity might be both possible and desirable when considered against the benefits of the wind farm proposal. Such circumstances should be discussed with the MCA and the commercial shipping sector and it should be recognised that alterations might require national endorsement and international agreement and that the negotiations involved may take considerable time and do not have a guaranteed outcome.”</p> <p>...</p> <p>2.6.165 The IPC should not consent applications which pose unacceptable risks to navigational safety after all possible mitigation measures have been considered.</p>

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			<p>...</p> <p>2.6.168 The IPC should, in determining whether to grant consent for the construction or extension of an offshore wind farm, and what requirements to include in such a consent, have regard to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the development.”</p>
2	<p>Legal submissions Written legal submissions are sought from applicant, Trinity House (THLS), the MCA and other IPs concerned with the following matters:</p> <ul style="list-style-type: none"> • Who determines what is a sea lane for the purposes of EN3 para 2.6.61-63 – how is a sea lane recognised? What is the appropriate applicable provision of UNCLOS, if one exists? What are the consequences of this? • Whether a sea lane is required to be formally chartered and/or designated? • To what extent are the provisions of IMO FSA MEPC.2/Circ12/Rev.2 capable of being something that constitute part of or directly derived from the UK’s membership of the IMO and hence an international obligation relevant to s104 of the PA2008? 	All interested parties	The PLA and ESL believe the Applicant, the MCA and Trinity House do not consider there should be designation as a sea lane, and they accept this view. However, the PLA and ESL consider legal submissions regarding designation to be a matter for the MCA and Trinity House.

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5	<p>Navigation Risk Assessment (NRA): written submissions in respect of Agenda Item 4</p> <p>Before Deadline 3 and through the agreed 'Technical Workshop' process, the Applicant is to Prior to D3, the Applicant identify the extent to which a SoCG on these technical matters can be compiled.</p> <p>All Interested Parties are to make written submissions encapsulating their responses to matters relating to technical considerations of the Navigation Risk Assessment (NRA) using the structure of the items listed under Item 4 of the agenda.</p> <ul style="list-style-type: none"> • Technical responses focusing on matters still in technical dispute and identifying what solution, if any, there might be to the areas of disagreement. • Best positions on progress: an indication from the Applicant and IPs whether or not there is the potential for a convergence of opinions or whether a fully adjudicated position is going to be required going forward. • If a matter is still unagreed /contended at D3, submissions should identify which technical matters require adjudication by the ExA, views that expert evidence will 	All parties	<p>The ExA is aware that that the PLA and ESL consider the NRA to be flawed (the main concern being with the data used, not methodology) and that the PLA was not adequately consulted. But more important than those issues, the PLA's main concern is that the NRA's conclusions are wrong.</p> <p>At a workshop arranged by the Applicant on 27 February 2019 the PLA and others discussed the NRA and the issues of sea room and pilotage, for which an adequate NRA is essential. The Applicant is understood to be considering a revision of the redline boundary. At the workshop the PLA, the MCA and Trinity House all expressed the view (which the Applicant was understood to agree) that any proposed change must be the subject of full assessment resulting in a revised NRA. It was emphasised to the Applicant that proper consultation with, and participation of, the PLA, ESL, the MCA and Trinity House would be a necessity. The PLA understood the Applicant to commit to revising the NRA on this basis.</p> <p>The PLA and ESL accordingly await sight of the Applicant's proposals and consultation on the supporting revised NRA that will be required. The hope is that that exercise will enable the parties to reach a satisfactory outcome.</p> <p>Given the position described above, it seems to the PLA that further submissions at this stage about its concerns with the NRA process to date would not assist a satisfactory solution. The PLA does however reserve its position on this very serious issue. Accordingly, at D3 the PLA defers comment on the specific issues</p>

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	<p>be provided, whether cross-examination may be sought and how much hearing time might be needed to inform preparation of an amendment to the examination timetable.</p> <p>The Applicant and IPs should note - any amendments to the red line boundary (RLB) would be at D4. Submissions at D3</p>		<p>identified by the ExA. In the absence of agreement on revised redline proposals the PLA (and if appropriate ESL) will respond fully to this action point at D4.</p> <p>Meanwhile the PLA and ESL will prepare for discussion with the Applicant a note of specific details which they consider need to be addressed in order to remedy flaws in the NRA.</p>
6	<p>Vessel deviation distance The Applicant and IPs are to provide their latest position on the most likely distance of deviation around the Thanet OWFE should use of the inshore route not be prudent, taking account of the possible need for inbound and outbound vessels to undertake a 'dip' to pick up or set</p>	The Applicant and IPs	<p>The length of deviation will be dependent on which pilot station is used by deviated vessels.</p> <p>NE Spit – 14nm</p> <p>Deviation using the NE Spit would add approximately 14nm. If that station remains available, the PLA considers that, because of (i) the extra shelter NE Spit affords and (ii) the far greater ease of</p>

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	down a pilot at the NE Spit diamond.		<p>pilot transfer, NE Spit will be the station that is used rather than the Tongue.</p> <p>It is noted that the Applicant believes the NE Spit would remain available. On that basis, the likeliest distance of deviation would be 14nm.</p> <p>The Tongue – 11nm</p> <p>Deviation using the Tongue would add approximately 11nm for vessels requiring a pilot. Because the Tongue is significantly further out to sea than the NE Spit, its use would result in longer pilot boat transfers. That, and the greater risk of interruption due to weather conditions, would have a significant impact on both ESL’s pilot boat service and the PLA’s pilotage service in terms of (i) speed of getting a pilot on board and (ii) timing and number of vessels to which the pilot service could be provided in any 24 hour period.</p>
7	<p>Technical workshop The Applicant is to organise a technical workshop as soon as possible to cover the matters stated under Item 5 of the agenda with a view to securing agreement. The Applicant to provide update on progress in this regard at D3.</p>	The Applicant and IPs	The workshop took place on 27 February 2019 and the Applicant’s revised proposals are awaited – see response to action point 5.