Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 3 to Deadline 3 Submission: Response to ExA Action Points arising from Issue Specific Hearing 5

Relevant Examination Deadline: 3

Submitted by Vattenfall Wind Power Ltd

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1 Introduction

1 This note has been drafted in response to requests by the Examining Authority (ExA) during Issue Specific Hearing 5 (ISH5) on 20/02/2019 and through reference to the ISH1 Action Points document PINS Ref EV-021.

2 The ExA, in EV-021, has set out seven Action Points which can be summarised as follows:

- Action Point 1 - Policy Considerations;
- Action Point 2 - Legal submissions;
- Action Point 3 –- Submission of International Maritime Organisation (IMO) Formal Safety Assessment (FSA) Guidance
- Action Point 4 – Peer review or other expert review: IMO FSA
- Action Point 5 – Navigation Risk Assessment (NRA) written submissions in respect of Agenda item 4
- Action Point 6 – Vessel deviation distance
- Action Point 7 – Technical workshop

3 Action Points 1, 2, 4, 5, 6 and 7 as responded to in this document. In response to Action point 3 the IMO FSA Guidance document is submitted at Appendix 7 to this Deadline 3 submission.

2 Action Point 1 – Policy Considerations

4 ***All IPs to provide full and specific details of what they consider to be the important and relevant policy considerations to this case.***

5 As submitted during the hearing and set out in the Oral summary to ISH5 (Appendix 11 to this response to Deadline 3), the only relevance that the NPSP could have would be by what the Port of Tilbury and London Gateway had described as "contextual and background" information. There is nothing in the NPSP which gives any relevant policy guidance on how to determine applications for development such as the present project. The relevant NPS policy vehicle was NPS EN-3 which gave guidance on how the effect of proposals on shipping routes should be assessed. There is no dispute in general terms that the potential effects of proposals on the operation of ports is capable of being important and relevant, but beyond contextual material there is nothing in NPSP which was important and relevant by way of actual policy guidance that advised how this application for this project should be determined.

6 During ISH5 the ExA also asked that the Marine Policy Statement ("MPS") be addressed as part of submissions on policy in relation to section 104(2) of the PA 2008.

7 Section 104(2) of the PA 2008 provides that "In deciding the application the Secretary of State must have regard to—…(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009" ("MACAA 2009").

8 Section 59 of MACAA 2009 provides that "(3) To the extent that the decision relates to a marine plan area, any marine plan which is in effect for that area is an appropriate marine policy document" and "(5) Any MPS which is in effect is an appropriate marine policy document for each of the following public authorities: (a) any Minister of the Crown…".

9 The MPS (2011) is in effect. It contains support for offshore renewables development:

> *"3.3.1 A secure, sustainable and affordable supply of energy is of central importance to the economic and social well-being of the UK. The marine environment will make an increasingly major contribution to the provision of the UK's energy supply and distribution… Contributing to securing the UK's energy objectives, while protecting the environment, will be a priority for marine planning.*
>
> *3.3.3 A significant part of the renewable energy required to meet these targets and objectives will come from marine sources. Offshore wind is expected to provide the largest single renewable electricity contribution as we move towards 2020 and beyond.*

3.3.4 When decision makers are examining and determining applications for energy infrastructure and marine plan authorities are developing Marine Plans they should take into account:

- *The national level of need for energy infrastructure, as set out in the Overarching National Policy Statement for Energy (EN-1)*
- *The positive wider environmental, societal and economic benefits of low carbon electricity generation…*
- *That…renewable energy resources can only be developed where the resource exists and where economically feasible.*
- *The potential impact of inward investment in offshore wind…as well as the impact of associated employment opportunities on the regeneration of local and national economies. All of these activities support the objective of developing the UK's low carbon manufacturing capability...*

3.3.19 The UK has some of the best wind resources in the world and offshore wind will play an important and growing part in meeting our renewable energy and carbon emission targets and improving energy security by 2020, and afterwards towards 2050….As the most mature of the offshore renewable energy technologies, it has the potential to have the biggest impact in the medium-term on security of energy supply and carbon emission reductions through its commercial scale output. Expansion of the offshore wind supply is likely to require significant investment in new high-value manufacturing capability with potential to regenerate local and national economies and provide employment.

3.3.23 Renewable energy offers the potential for significant broad-scale environmental benefits through mitigating greenhouse gas emissions from energy production. In addition there are a number of potentially significant socio-economic benefits from the sector including employment opportunities, export business and energy security".

11 It also advises (at paragraph 3.4.7) that "Increased competition for marine resources may affect the sea space available for the safe navigation of ships. Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety and ensure that their decisions are in compliance with international maritime law". The Applicant through the control measures set out in the NRA and as a result of boundary change has sought to minimise negative impacts on these receptors.

12 As for Marine Plans, the project falls within the South East Marine Plan area but this plan is in draft form and is not in effect. The East Inshore and East Offshore Marine Plans were published as a single document in 2014. The decision in relation to this project does not relate to these areas, in that the RLB falls outside the areas covered by those plans; and the plan policies are essentially designed to apply to proposals within the plan areas. However, they contain information relating to shipping routes (see Figure 18), which has been reflected in Figure 11 of the NRA (see further below).

3 Action Point 2 – Legal submissions

13 ***Written legal submissions are sought from applicant, Trinity House (THLS), the MCA and other IPs concerned with the following matters:***

- **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 charted 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**

14 The Applicant sets out initial observations on the issue of sea lanes below and will review its submissions in the light of any submissions received from the IPs and the MCA in particular.

15 Sea lanes are referred to in EN3 paragraphs 2.6.61 which advises as follows:

> *"The IPC should not grant development consent in relation to the construction or extension of an offshore wind farm if it considers that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the development. The use of recognised sea lanes essential to international navigation means:*
>
> > *(a) anything that constitutes the use of such a sea lane for the purposes of article 60(7) of the United Nations Convention on the Law of the Sea 1982; or*
> >
> > *(b) any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone (REZ)".*

16 This guidance reflects provisions contained within section 99 of the Energy Act 2004, which added section 36B to the Electricity Act 1989. Section 36B set out duties imposed on the MMO in relation to navigation when granting a consent under the 1989 Act. Section 36(1B) provides that the MMO (see section 36B(1A)) may not grant such a consent if it considers that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of offshore generating activities (section 36B(1)(a)). The "use of recognised sea lanes essential to international navigation" is defined as per paragraph 2.6.61 of EN-3. The legislation contains no further definition of this term.

17 Article 60(7) of the United Nations Convention on the Law of the Sea 1982 ("UNCLOS")[1] is part of a wider provision dealing with "Artificial islands, installations and structures in the exclusive economic zone[2]", as well as safety zones. Article 60(1) provides as follows:

> *"1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:*
>
> *(a) artificial islands;*
>
> *(b) installations and structures for the purposes provided for in article 56 and other economic purposes;*
>
> *(c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.*
>
> *2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures…*
>
> *4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures".*

18 Article 60(7) then provides that:

> *"Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation".*

19 The term "recognised sea lanes essential to international navigation" is not defined in UNCLOS.

20 The term "sea lane" is however adopted elsewhere. In Part II "Territorial Sea and Contiguous Zone[3]", Article 22 "Sea lanes and traffic separation schemes in the territorial sea" provides that:

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[1] The United Kingdom acceded to the UNCLOS in 1997: https://treaties.fco.gov.uk/data/Library2/pdf/1999-TS0081.pdf

[2] Part V of UNCLOS makes provision for the exclusive economic zone, defined in Article 55 as "an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention". By Article 56(1), for example, "in the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures." By Article 57 the zone "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured".

[3] The "contiguous zone" is defined in Article 33 to mean "a zone contiguous to its territorial sea" which "may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured".

"1. The coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships…

3. In the designation of sea lanes and the prescription of traffic separation schemes under this article, the coastal State shall take into account:

(a) the recommendations of the competent international organization;
(b) any channels customarily used for international navigation;
(c) the special characteristics of particular ships and channels; and
(d) the density of traffic.

4. The coastal State shall clearly indicate such sea lanes and traffic separation schemes on charts to which due publicity shall be given".

21 In Part III "Straits used for International Navigation[4]", Article 41 "Sea lanes and traffic separation schemes in straits used for international navigation" provides that:

"1. In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.

2. Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them…

4. Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.

5. In respect of a strait where sea lanes or traffic separation schemes through the waters of two or more States bordering the strait are being proposed, the States concerned shall cooperate in formulating proposals in consultation with the competent international organization.

[4] See Articles 34-7, in particular Article 37 which provides that "this section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone". As for the definition of the "high seas", Part VII provides generally for the "High Seas" and Article 86 states that "the provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State".

> *6. States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.*
>
> *7. Ships in transit passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article".*[5]

22 These articles make separate provision in respect of sea lanes, outside Article 60(7). They do not provide a direct definition of "sea lanes essential to international navigation". However, in circumstances where sea lanes must be designated and publicised if established in territorial waters (or in archipelagic waters or in straits used for international navigation), it is reasonable to assume that sea lanes essential to international navigation should be "recognised" with some formal procedure to this end.

23 In this respect the Applicant notes that there appears to be no dispute that the IMO is "the competent international organization" in matters of navigation under UNCLOS.[6] As matters stand the Applicant considers it reasonable to assume that if a sea lane essential to international navigation is to be "recognised," it must be recognised as such by the IMO; and that this should be achieved by some formal publicised means, including through entries on navigational charts. The Applicant is not aware of the routes to the north and west of the proposed TEOW in particular, as assessed in the NRA, being designated or otherwise recognised by the IMO.[7]

24 Paragraph 2.6.61 also includes within the definition "sea lanes essential to international navigation" the phrase "any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone (REZ)".

25 Paragraph (b) still refers back to "paragraph (a)" and, for the reasons given above, the Applicant is at this stage not satisfied that any route considered in the NRA falls within paragraph (a).

[5] Similar provision is made in Part IV "Archipelagic States ", in Article 53 "Right of archipelagic sea lanes passage".

[6] The IMO is only mentioned once in UNCLOS (Article 2 of Annex VIII, in relation to special arbitration provisions). However Article 1 of Convention on the International Maritime Organization (the "IMO Convention") sets out the purposes of the IMO which include "to provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning the maritime safety, efficiency of navigation and prevention and control of marine pollution from ships". The International Convention for the Safety of Life at Sea ("SOLAS") provides in Chapter V, Regulation 10, that "The Organization is recognised as the only international body for developing guidelines, criteria and regulations on an international level for ships' routeing systems". Regulation 10 makes further provision for the establishment of routeing systems with the IMO.

[7] See Figure 11 of the NRA.

26 Paragraphs 2.6.162-3 do not refer to sea lanes but to terms including "strategic routes essential to regional, national and international trade", "major commercial navigation routes" (2.6.162) and "less strategically important shipping routes" (2.6.163), to which different guidance applies. These terms are not defined in the NPS. The Applicant has not seen any submissions to suggest that paragraph 2.6.162 applies; and will address this issue further in advance of Deadline 4; but in any event has explained how site selection has taken into account shipping activity and how the project would not have any substantial effect on that activity.

Whether a sea lane is required to be formally charted and/or designated?

27 Although UNCLOS Article 60(7) does not explicitly refer to formal designation or charting as appears in other Articles within UNCLOS, the term "recognised sea lane" within that Article suggests some form of procedure by which a sea lane is "recognised" internationally as essential and, subject to considering submissions from the MCA and other IPs, the Applicant considers it reasonable to assume that the reference to sea lanes under paragraph 2.6.161(a) involves recognition by the IMO by some formal publicised means, including through entries on navigational charts.

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?

28 IMO FSA MEPC.2/Circ12/Rev.2 ("IMO FSA") is entitled "Revised Guidelines for Formal Safety Assessment (FSA) for Use in the IMO Rule-Making Process". Paragraph 1.2 states that "These guidelines are intended to outline the FSA methodology as a tool, which may be used in the IMO rule-making process". The guidelines go on to advise as follows:

> *"1.3.1 The FSA methodology can be applied by:*
>
> *1. a Member State or an organization in consultative status with IMO, when proposing amendments to maritime safety, pollution prevention and response-related IMO instruments in order to analyse the implications of such proposals; or*
>
> *2. a Committee, or an instructed subsidiary body, to provide a balanced view of a framework of regulations, so as to identify priorities and areas of concern and to analyse the benefits and implications of proposed changes.*
>
> *1.3.2 It is not intended that FSA should be applied in all circumstances, but its application would be particularly relevant to proposals which may have far-reaching implications in terms of either costs (to society or the maritime industry), or the legislative and administrative burdens which may result".*

29 Section 104 of the PA 2008 provides that:

> *"(3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.*
> *(4) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations".*

30 The Applicant considers that section 104(4) applies to international *legal* obligations, in particular treaties or conventions.

31 However IMO FSA is intended only to contain "guidelines" and not to set out any accepted rules or other legal commitments between member states. They have not been published as rules which have any legal effect as a matter of international law.

32 The Applicant does not consider that the IMO FSA amounts to, or contains, any legal obligations on the UK.

4 Action point 4 – Peer review and other expert review: IMO FSA

33 ***The MCA is to provide a view on whether peer review or external expert review is a mandated or required element of compliance with IMO FSA MEPC.2/Circ12/Rev.2 If so, has this been adequately addressed within the Thanet OWFE NRA? If not, what more should be done?***

34 Whilst this action is for the MCA the Applicant would note that the references to agreement between experts in the guidelines should be read in context, in particular their preparation to inform IMO rule-making where different countries would be involved. There was no specific guidance to suggest that some form of peer review was necessary when development proposals were being brought forward such as in this case. In any event there had not only been internal discussions between different experts which informed the preparation of the NRA; there had also been consultation as required by the legislation and guidance and the NRA specifically recorded in Section 4 how the results of consultation had been reflected in the assessment within the NRA itself.

35 It should also be noted that *The Revised Guidelines for Formal Safety Assessment (FSA) For Use in the IMO Rule-Making Process* (MSC-MEPC.2/Circ.12/Rev.1 and 2) are guidance issued by the International Maritime Organisation (IMO) to support the use of Formal Safety Assessment (FSA) by Member Governments, organisations in consultative status with the IMO or an IMO regulatory review committee. The purpose of these documents is to provide a structured and systematic methodology for FSA when proposing amendments to maritime safety, pollution prevention and response related IMO instruments. In short, the guidance is intended for use in amending IMO instruments/regulations.

36 However, as an established IMO-approved methodology, FSA is also used for other circumstances and scenarios and especially to support the need for decision making and risk reduction in the maritime domain by Member Governments. The UK Maritime Administration adopt FSA principles to support their view around the convergence of marine licensing and safety of navigation across UK home waters.

37 In this context, whilst it may be appropriate for the FSA methodology to be employed to support the Navigation Risk Assessment on the proposed project, it should be noted that this type of application is not what was intended by MSC-MEPC.2/Circ.12/Rev.1 and 2. Consequently, whether the supporting guidance laid down in these documents is relevant to this use, is open to question.

38 Whilst MSC-MEPC.2/Circ.12/Rev.1 and 2 both include a review process linked to the use of the FSA methodology, Appendix 10 refers to and reinforces the intended use of the methodology by Member States, organisations having consultative status with the IMO (Members), IMO review committees or instructed subsidiary bodies to support IMO decision making. Where Paragraph 25 refers to *Other experts in various fields may be involved when reviewing and discussing the results of the FSA study*, this is in relation to the sub-committee or working group tasked by the Member States, organisations having consultative status with the IMO (Members), IMO review committees or instructed subsidiary bodies to undertake the FSA.

39 Consequently, within the context of FSA being adopted to support an NRA, there is no defined requirement or guidance for the results of such an FSA to be subject to peer review or external expert review.

40 Despite this, the typical approach employed by Marico Marine sees NRAs conducted by the company being the result of a 'Salt & Science' approach, where mariners work alongside consultants to undertake stakeholder consultation, vessel traffic analyses and hazard scoring. This provides for quality assurance and ensures an element of peer review is built in to all finalised reports before they then receive a final quality check and submission to the client for onward review/acceptance.

5 Action Point 5 – Navigation Risk Assessment (NRA): written submissions in respect of Agenda Item 4

41 *Before Deadline 3 and through the agreed 'Technical Workshop' process, the Applicant is to Prior to D3, the Applicant should identify the extent to which a SoCG on these technical matters can be compiled.*

42 A workshop with IPs was held on 27 February 2019. It was considered appropriate to focus on whether there was scope for further mitigation to be the subject of agreement between the parties. This was clearly set out in terms of reference provided to the IPs prior to the workshop and these made clear that the Applicant would welcome specific technical meetings with IPs who had outstanding concerns.

43 Only Port of Tilbury / London Gateway responded, requesting a meeting prior to Deadline 3; and a meeting was held following the workshop. As their assessment work is ongoing, no progress was made although further discussions prior to Deadline 4 may well lead to additional agreement in the SoCG.

44 PLA responded to the terms of reference stating requesting that their concerns regarding the NRA and pilotage study be discussed at the workshop. As with other parties, an offer for a specific technical meeting on these matters was made, but has not currently been taken up. It should be noted however that the Applicant met with PLA in the week prior to ISH5 to go through the SoCG and received no additional comments to those which were the subject of the Applicant's Deadline 2 response. However the Applicant will seek to arrange a further technical meeting.

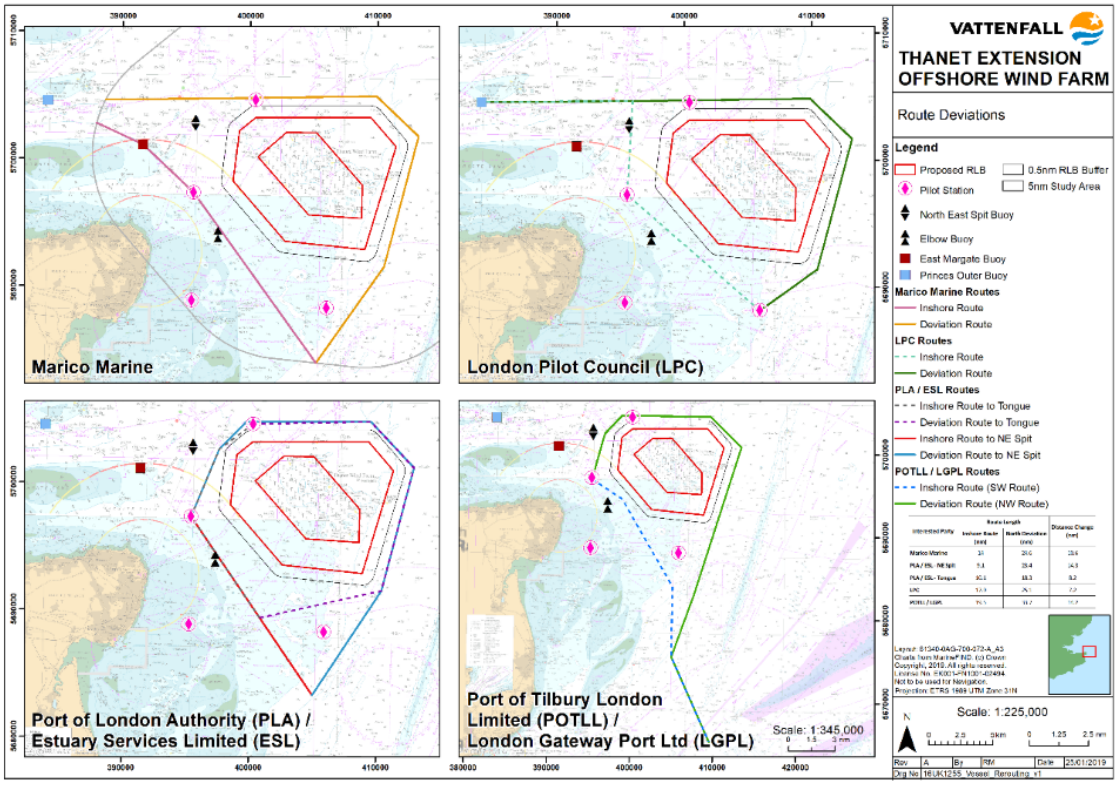
45 All Interested Parties are to make written submissions encapsulating their responses to matters relating to technical considerations of the Navigation Risk Assessment (NRA) using the structure of the items listed under Item 4 of the agenda. The Applicant will use these submissions as the basis for further discussions in technical meetings and if feasible a further workshop. The Applicant's submissions under item 4 are set out in the oral summary from ISH5, Appendix 11 at Deadline 3.

46 The Applicant was also requested to set out a 'route map' proposing means of responding procedurally to any changes. It is noted that the ExA has issued a revised rule 8 letter setting out revisions to the programme including an additional deadline. The Applicant considers this reflects it's own views on the process leading up to the hearings in April and confirms that any amendments to the project would be made at Deadline 4.

6 Action Point 6 – Vessel deviation distance

47 ***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 down a pilot at the NE Spit diamond.***

48 The Applicant has presented, at Appendix 2 to Deadline 2 (Section 2.4 titled 'Distance of re-routing') analysis of deviation distance submissions provided by the Interested Parties and the Applicant which included a diagrammatic representation to collate the various re-routing submissions from all parties at Deadline 1 which is shown below for reference.



49 Further discussion was held at ISH5 on agenda item 5f with regards to the additional steaming time that would be incurred for vessels electing to re-route and transit around the wind farm rather than the inshore route. The Applicant agrees that the key difference in submitted steaming times submitted at Deadline 1 is between 11nm and 14.4nm (a difference of 3.4nm or circa 15minutes of transit time) and is with regards to whether a vessel electing to not transit the inshore route and requiring a pilot transfer would then 'dip' back into the inshore route area to transfer the pilot at NE Spit Pilot Diamond.

50 The Applicant maintains that in this instance a vessel would have the option of conducting a pilot transfer at Tongue or NE Goodwin pilot boarding station and it is counter intuitive for a vessel that chooses not to navigate the inshore route to 'dip' back into the area when alternatives are available.

51 LPC confirmed this position, at ISH5, stating that it is currently common practice for vessels not electing to transit the inshore route to transfer a pilot at NE Goodwin Pilot Boarding Station as the 'dip' would not be logical for reasons of distance. This is particularly the case in periods of adverse weather (strong NE wind) which are instances, in the present day, when vessels elect to deviate and/or ESL are unable to make a safe passage to the NE Spit Pilot Boarding Station. ESL stated, at ISH5, that they would 'still expect' a deviated ship to come to the NE Spit Pilot Boarding Station for reasons of operational convenience to ESL, although the Applicant notes that this would draw vessels into an area they had otherwise elected to avoid.

52 In summary, the Applicant maintains that pilotage operations would be able to continue at NE Spit and therefore the wind farm extension itself would not cause vessels to divert around the wind farm. The Applicant also notes that if (contrary to its case) vessels do elect to divert, alternative pilot boarding stations are available at Tongue and NE Goodwin.

53 The workshop focussed on the issue of sea room but the Applicant will seek further technical discussion of this issue.

7 Action Point 7 – Technical Workshop

54 ***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.***

55 A workshop with IPs was held on 27 February 2019. The workshop initially confirmed that the Applicant is willing to refine the RLB, but noted that a better understanding of the searoom in the area was necessary in order to focus the RLB change appropriately. The workshop therefore sought to focus on gaining an understanding of the qualitative matters discussed at ISH5, and to seek to reach agreement on a number of matters in relation to sea room within the region. The objectives of the workshop were to identify the following:

- Agree parameters –
  - Vessel sizes – length
  - Vessel sizes – beam
  - Vessel sizes – draught
  - Vessel characteristics
- Agree calculations
  - Calculation methodology – LPC example of MGN543 passing distances
  - Calculation methodology – LPC example of turning space
  - Calculation methodology – 90% - a useful metric
- Agree spatial differentiation?
  - Dipping
  - Pilotage
  - Transit
- Agree buffers
  - Prudent mariner – 0.5nm
  - 'Extremities' – vessel length

56 The outcomes of the workshop were as follows:

- The Applicant will be making an amendment to project in recognition of the submissions by the interested parties. This will be made by Deadline 4.
- The IPs will reserve their judgement on these amendments until presented prior to Deadline 4 with assessment of how this has affected the outcomes of the NRA

- Parameters for sea room should include consideration of the largest vessels (being 400, 366, 330 and 299m in length), vessel handling characteristics, and a worst case beam of 60m, worst case draft 11.5m.
- Points of reference for considering sea room distances are Elbow Buoy, North East Spit pilot diamond, North East Spit buoy and Tongue pilot diamond.
- The calculations from MGN543 originally put forward by LPC were presented as starting point for defining sea room; and no dispute was raised on the principle of this.
- No sea room requirements were charted or drawn by the IPs, additional narrative and qualitative feedback was given in order to be considered by the Applicant.

57 In summary the parties are hopeful progress can be made but the IPs do not feel able to comment on the position on which side of the 'y fork' the examination is on until specific project amendments have been presented. It is not certain that adjudication can be avoided, but all parties are open to discussing this matter further prior to Deadline 4 with possibility of agreement by this time.

58 The table below provides further clarification with regards ISH5 Agenda item 5, noting those matters discussed.

Agenda Item (sub paragraphs to item 5)	Applicant update
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?	The Applicant sought to define searoom in and around the area through the use of a charting exercise and a set of parameters to be agreed. The IPs did not consider it possible to adequately map out areas of specific importance, or specific searoom. However, it was possible to agree certain parameters that influence the necessary searoom, and the IPs provided a narrative understanding of the qualitative matters considered to be relevant. It was agreed that the method of calculation referenced in MGN543, and presented by LPC in their Deadline 1 submission is a suitable method for calculating sea room. It was agreed that the largest vessels to be used for calculation are 299m, 333m, 366m, with reference also made to occasional 400m vessels being able to potentially utilise the area. It was submitted by the IPs that the widest beam is 60m. It was submitted by the IPs that the likely maximum draught utilising the inshore route is 11.5m
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?	Please see the Applicant's response to Action Point 6 above.
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?	Please see the Applicant's response to Action Point 6 above.