

**Thanet Offshore Wind Farm Extension
Agenda for the Issue Specific Hearing 8 (ISH8):
Environmental, Shipping, Maritime, Fishing and other matters**

Date:	Tuesday 16 April 2019 and Wednesday 17 April 2019
Time:	10.00am on each day (Hearing room opens from 9.30am) An evening session will commence at 6.30pm on 16 April 2019.
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 8 (ISH8)

ISH8 is being held to enable the Examining Authority (ExA) to:

- continue its inquiry into the construction and operational effects of the proposed development at sea and on land.
- continue its inquiry into biodiversity, ecology and natural environment effects at sea and on land.
- To provide an opportunity for the Applicant, landowners, national and local authorities and voluntary organisations to be heard on these matters.
- continue its inquiry into fishing and fisheries effects of the proposed development and to enable representatives of the Thanet Fishermen and individual fishing Interested Parties (IPs) to present any further submissions.
- 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 ISH5 and written representations submitted at Deadlines 3 and 4.
- To review Deadline 3, Deadline 4, Deadline 4B and 4C submissions on the **navigation risk assessment** and its relationship with the navigation risk chapter of the Environmental Statement (ES) **and any consequences of**

¹ Building 500 is adjacent to and in the same building complex as Discovery House.

the proposed Material Change application and the Structures Exclusion Zone (SEZ).

- To provide an opportunity for the Applicant, ports, pilotage, shipping, navigation and maritime safety and fishing and fisheries stakeholders to be heard on these matters.

Participation, conduct and management of hearing

This is the eighth 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 constructional, operational and natural environment, shipping, navigation, maritime safety and fishing and fisheries effects of the proposed development.

In recognition of the particular needs of the fishing industry and community, fishing and fisheries issues (which may also include fishing related navigation and maritime safety issues) will be addressed at an evening session to be held on 16 April 2019 commencing at 6.30pm (see Agenda It).

Subsequent to ISH3, ISH5 and ISH6 in February 2019, action lists were published and the Applicant and Interested Parties (IPs) provided responses at Deadline 3 and Deadline 4. Following oral submissions at those ISHs, written representations and action list responses, the ExA wishes:

- to review policy compliance matters raised in written representations and responses;
- to understand changes proposed at Deadline 4 and Deadline 4B to the Application and its evidence base to address policy and factual matters raised at ISH5 and Deadline 3 and the effects of those such changes and whether the Environmental Statement needs to be modified;
- if necessary, how IPs and Other Persons might be provided with opportunities to view and comment on any consequent changes to Navigational Risk Assessment and Environmental Statement; or
- if changes proposed are sufficient for IPs to remove their objections to development proposals, and if not, to understand the scope of matters still in dispute between the Applicant and the ISH5 IPs and upon which the ExA is being requested to adjudicate in its recommendation to the SoS.

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.

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;
- Natural England;
- Marine Management Organisation (MMO);
- Kent Wildlife Trust;
- The National Trust;

- Kent and Essex Inshore Fisheries Conservation Authority;
- Environment Agency;
- National Grid Electricity Transmission (NGET);
- UK Power Networks (UKPN);
- Nemo Link Ltd (NLL);
- The Government of France;
- Historic England
- Kent County Council;
- Dover District Council;
- Thanet District Council.
- the Maritime and Coastguard Agency (MCA) and the Sunk VTS User Group;
- Trinity House Lighthouse Services;
- Port of London Authority (Winckworth Sherwood LLP);
- Port of Sheerness Ltd. (Peel Ports – London Medway);
- Estuary Services Ltd. (Winckworth Sherwood LLP);
- Mr Richard Jackson (pilot launch services);
- Mr David Ninnim (pilot launch services);
- London Pilots Council;
- United Kingdom Maritime Pilots Association;
- UK Chamber of Shipping;
- London Gateway Port Ltd. (LGPL) (Pinsent Masons LLP);
- Ministry of Defence (MoD);

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

- Port of Tilbury London Ltd. (PoTLL) (Pinsent Masons LLP); and
- BritNed Project.

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

- As public bodies with policy and regulatory responsibilities for the maritime and terrestrial environment;
- As bodies involved in energy transmission and distribution with affected assets;
- As landowners, managers and voluntary organisations with relevant interests;
- As national and local authorities for the affected area.
- 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 marine pilotage and services to pilots;
- As bodies or persons active in or representing the shipping industry;

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 April 2019 at 2pm** to confirm their attendance.

Further Interested Parties (IPs) who are interested in constructional, operational, environmental, fishing, shipping, navigation and marine safety effects may attend the hearing but must contact the Planning Inspectorate by **12 April 2019 at 2pm** 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 constructional, operational, environmental, fishing, 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 April 2019 at 2pm**. 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 on:

- shipping, navigation and marine safety effects issues shall attend for the appointed start time of 10.00am on Tuesday 16 April 2019;
- constructional, operational, environmental issues shall attend at 2.30pm (the afternoon session) on Tuesday 16th April 2019;
- fishing and fisheries issues shall attend at 6.30pm (the evening session) on Tuesday 16th April 2019; and
- shipping, navigation and marine safety effects issues shall attend as necessary on a second day of hearing from the appointed start time of 10.00am on Wednesday 17 April 2019.

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; (in construction, and (in fishing and fisheries) to fishing and fisheries and (in the natural environment field) marine and terrestrial ecology, ornithology, botany and related disciplines, 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

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

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 into Nationally Significant Infrastructure Project applications. 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.

The ExA has indicated that matters relating to shipping, navigation and maritime safety that arise from the Material Change request made by the Applicant at Deadlines 4 and 4B or are raised by IPs with an interest in shipping, navigation and maritime safety at Deadline 4B as being in substantial contention, it may allow cross questioning.

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 may pursue lines of inquiry in the course of the discussion which are not listed on the agenda.

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

Agenda

1. Welcome, introductions and arrangements for this Issue Specific Hearing 8 (ISH8)

2. Procedural Implications of Submissions at Deadlines 3, 4, 4B and 4C

The ExA will review all documents amending the application or addressing advice provided to the applicant under s51 PA2008 submitted at Deadlines 3, 4, 4B and 4C. The procedural implications of those documents will be considered, including:

- a) The SEZ Material Change request submitted at Deadlines 4 and 4B; and
- b) Arrangements for notice of and consultation on the SEZ Material Change request.

The ExA will seek comments from IPs.

The Applicant will be provided with a right of reply.

3. Applicant's Substantive Position Shipping, Navigation and Maritime Safety post ISH5 and Responses by IPs and OPs

The ExA will ask the Applicant about the concerns expressed and mitigations sought in ISH5 and subsequent Written Representations, with particular reference to requests from IPs to exclude wind turbine generators and related structures from the red line boundary broadly to landward of the proposed development. The Applicant has made its own SEZ Material Change request for a Structures Exclusion Zone over a smaller area of sea than that sought by IPs.

The ExA will invite the Applicant's to present and explain its SEZ Material Change.

Views will be sought from IPs about:

- a) The scope of the documentation provided for the SEZ Material Change;
- b) Headline responses to the Applicant's proposal; and
- c) Whether any additional analysis is sought;
- d) What matters are in headline terms still in contention;
- e) The consideration of applications to cross-question technical evidence in substantial contention; and
- f) The allocation of relevant technical evidence to relevant Agenda items.

The Applicant will be provided with a right of reply.

4. Policy Considerations

The ExA will ask the Applicant to summarise their current position on policy with regard to NPS EN-3 paragraphs 2.6.147 to 2.6.175 and any other relevant policy or legislative requirements to identify the following:

- a) To which if any routes approaching London and Sheerness ports does the definition of '...recognized sea lanes essential to international

- navigation...' apply, with reference to UNCLOS 1967; and could the proposed TEOW development cause interference with their use (2.6.161)?
- b) Has site selection (or definition) 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' (2.6.162) and if not, what adverse effects can be quantified and presented in evidence, or what reorganisation of traffic activity might be effected to mitigate disruption or economic loss?
 - c) Has the Applicant taken sufficient measures to 'minimise negative impacts to as low as reasonably practicable (ALARP)' and if not, what additional measures could be implemented (2.6.163)?
 - d) Are there sufficient 'significant concerns over the frequency or consequences of [such] incidents [that] a full Search and Rescue Response Assessment is 'required before the application can be determined' (2.6.164)
 - e) Would the proposed development 'pose unacceptable risks to navigational safety after mitigation measures have been adopted'? (2.6.165) and if that is considered by regulators to be the case with present proposals, could additional design or risk controls/mitigation measures be implemented to make risks acceptable?
 - f) Has the scheme been 'designed to minimise [the] effects on recreational craft and that appropriate mitigation measures, such as buffer areas ...allow for recreational use outside of commercial shipping routes' (2.6.166)?
 - g) Are mitigation measures possible to 'negate or reduce effects on navigation to a level sufficient to enable the [Secretary of State] to grant consent' (2.6.167)?
 - h) What is the 'extent and nature of any obstruction or danger to navigation, which, (without amounting to interference with the use of [such] sea lanes)...likely to be caused by the development' (2.6.168 and 2.6.161) with regard both to 'the overall effect of development in question and to any cumulative effects of other relevant proposed, consented and operational offshore wind farms' (2.6.169)?
 - i) Has engagement between the Applicant and maritime navigation stakeholders ensured that solutions have been sought 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?
 - j) Has the Navigation Risk Assessment (NRA) identified and assessed cumulative and in-combination risks associated with the development and other developments in the Thames Estuary and its approaches (2.6.157)?

IPs and OPs with interests in shipping, navigation, ports and channels 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.

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

At ISH2 and ISH5 there was continued dispute between the Applicant and IPs regarding the continued navigability in all MetOcean conditions in the judgment of a prudent master by large commercial vessels of:

- the inshore passage (Route 4 in the NRA) between TOWF and the Kent coast; and
- the NE Spit pilot boarding zone as currently identified.

The Applicant has proposed a Structures Exclusion Zone (Deadline 4 and D4B Material Change Request) and carried out additional consultation with IPs that has attempted to address concerns and disputed definitions of safe sea room. The ExA will ask the regulatory and service bodies including the MCA, Trinity House Lighthouse Services, the shipping industry and IPs responsible for and operating any pilot services, ports, harbours and channels affected by the proposed development to summarise their current position with regard to prudent navigability, with specific attention to the following matters:

- a) Definition of adequate, safe sea room for passage between the array and Elbow cardinal buoy; and between the array and NE Spit cardinal buoy, taking account of extreme MetOcean conditions, speed, turning radii and other relevant characteristics of different vessel types demonstrated to be using these waters individually or in combination with other vessels meeting or crossing.
- b) Definition of adequate, safe sea room for usability of the NE Spit pilot station in all MetOcean conditions in which it currently operates; sea room being defined by NE Spit bank depth constraints; the limit of Margate Road anchorage; adequate separation from NE Spit Racon buoy and Elbow buoy; and a safe buffer distance from the proposed array extension taking account of any temporary exclusion zone or zones and the effects of crossing traffic including fishing or leisure vessels, wind farm service vessels (WFSVs) and construction or maintenance vessels and vessels leaving or approaching anchorage.
- c) The case made by the Applicant that the siting of the proposed development and the results of the pilot transfer bridge simulation are such as not to need relocation of anything but exceptional pilot transfer operations to the north or north-east of NE Spit buoy. If the IPs and OPs do not agree with that case, on what technical basis is the Applicant's position incorrect?
- d) Does the case made previously by IPs and OPs that an effect of the siting of the proposed development and consequent constriction between the proposed array boundary and NE Spit Racon buoy or Elbow cardinal buoy may be to make a material increase in masters' decisions to avoid the inshore route (Route 4) still hold good?
- e) The case made that an additional 1 hour steaming time per ship would be the 'cost' accrued to passages where masters decide to avoid the Inner Channel due to the reduced sea room consequent on development of the Thanet Extension and instead pass to the north of the Thanet Wind Farm and dip-down to the NE Spit pilot station before

continuing passage to the southerly channels into the rivers Thames and Medway?

The Applicant will be provided with a right of reply.

The ExA will seek to understand the degree to which these matters are capable of resolution in additional Statements of Common Ground (SoCGs) and which of these matters it is now being asked to adjudicate. If necessary, cross-examination of evidence for competing positions will be held now or later in this ISH8.

6. Detailed Considerations: Navigational Risk Assessment (NRA)

As a consequence of review of IPs and OPs objections to the NRA at ISH5 and agreements reached in workshops and consultations following ISH5, the NRA Addendum submitted at Deadline 4B on 5 April 2019 concludes:

“Whilst this assessment has identified that the Baseline and Inherent risks are already at the lower end of the ALARP risk category, the assessment has identified risk control measures that could reduce the risk further, if implemented. The risk controls identified include those identified and applied in the original NRA, those measures that were not applied at the time, and measures identified by the PLA in the 2015 NE Spit but not applied. The latter having been introduced to potentially reduce baseline risk to a level that was aspired to but not implemented at that stage. It is important to note that, if implemented, the PLA risk control measures would reduce the Baseline risk, and therefore the Inherent risk further.”

The ExA will ask the Applicant to make a summary report on the NRA Workshop, associated consultations and the resulting NRA Addendum, with particular coverage of the following:

- a) Could the NRA Addendum concluding statement (quoted above) be clarified?
- b) To what extent have the navigational risks (predicted to increase as a result of proposed development) been reduced as a result of the proposal of a Structures Exclusion Zone?
- c) How were hazards scrutinised and re-assessed in collaboration with stakeholders?
- d) How were the new hazards 1-4 identified and agreed with stakeholders?
- e) How and by whom were the new hazards 5-18 assessed following the NRA workshop?
- f) How were proposed risk controls reappraised and selected for inclusion in the NRA Addendum recommendations?
- g) How have societal risks (as a combination of multiple risks with consequences other than safety of life) been assessed to be Tolerable or Acceptable?
- h) What are the implications of the NRA Addendum 6.2 Recommendations that: *“...consideration should be given on the basis of the final design of the project to undertaking a full bridge simulation study.”*
- i) Has any expert review or QA audit of the NRA or the NRA Addendum been carried out independently of the project team and how did the NRA Addendum conclusions take account of such input?

The ExA will invite discussion of the NRA review process and its conclusions and seek views from IPs and OPs responsible for marine safety and regulation and for operating any pilot services, ports, harbours and channels.

The Applicant will be provided with a right of reply.

7. Construction Effects at Sea and on Land

The ExA will review the following:

- a) Foundations and trenching: methods, arisings and materials disposal.
- b) Landfall and cable route options and construction methods.
- c) Construction and laydown areas.
- d) Ground investigation, management of contaminated land and ground conditions in and adjacent to Pegwell Bay Country Park, and associated effects to water course and marine water column.
- e) Substation construction.
- f) Grid connection and interface with NGET assets

The ExA will seek comments from IPs.

The Applicant will be provided with a right of reply.

8. Biodiversity, Ecology and Natural Environment Considerations

The ExA will ask the Applicant to summarise the latest position in respect of Habitats Regulations Assessment conclusions, with particular reference to the following:

- a) Offshore Ornithology:
 - i. Red Throated Diver of the Outer Thames Estuary SPA
 - a. In-combination displacement effects
 - ii. Kittiwake of the Flamborough and Filey Coast SPA
 - a. Collision Risk Modelling
 - b. HRA conclusions on in-combination effects
 - iii. In Principle Monitoring Plan
 - iv. Any other matters
- b) Marine Mammals
 - i. Harbour Porpoise of the Southern North Sea SAC
 - a. HRA conclusions
 - b. Site Integrity Plan
 - ii. Piling Protocol
- c) Offshore Designated Sites
 - i. Chalk reefs of the Thanet Coast SAC
 - a. the effects of the project alone
 - b. the effects of the project in-combination with other plans and projects
- d) Inter-tidal saltmarsh habitats
 - i. Saltmarsh Mitigation, Reinstatement and Monitoring Plan
 - ii. Seasonal restriction

- iii. Thanet Coast and Sandwich Bay SPA and Ramsar
- e) Goodwin Sands proposed Marine Conservation Zone
 - i. Sandwave clearance, dredging and disposal
 - ii. Cable rock protection
 - iii. Cumulative/in-combination effects
 - iv. Pre and post-construction benthic monitoring
- f) Any other environmental and construction matters.

The ExA will seek comments from IPs.

The Applicant will be provided with a right of reply.

9. Effects on Fisheries and Fishing

The ExA will ask the Applicant to review measures taken to mitigate the effects of the proposed development on fishing and fisheries.

The ExA will ask bodies responsible for maritime safety, navigation, sea use, fishing and fisheries regulation for their observations on the impacts of the proposed development on fisheries and consequential effects on navigation by fishing vessels in the vicinity of the windfarm.

The Applicant will be provided with a right of reply.

10. Oral Submissions from Fisheries and Fishing Representative Bodies

The ExA will hear bodies representing fisheries and fishermen on:

- a) Effects on navigation and operational safety for fishing vessels.
- b) Economic and employment effects on the fishing industry.
- c) Social and economic and employment effects on fishing communities.
- d) General effects on the operation of vessels.
- e) Effects on access to fishing grounds.

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

If necessary, the Applicant will be provided with a right of reply.

11. Oral Submissions from Individual Fishermen

The ExA will hear individual fishermen on:

- a) Effects of the proposed development on the operation of particular fishing vessels and fishing methods.
- b) Effects of the proposed development on access to particular fishing grounds.
- c) The ExA may extend an opportunity for the Applicant, IPs and Other Persons to raise relevant matters.

If necessary, the Applicant will be provided with a right of reply.

12. Mitigation of Effects on Navigation and Commerce

The ExA will ask the Applicant, IPs and OPs to cross-examine witnesses on evidence presented on contended matters that have not been addressed within the framework provided by earlier agenda items.

13. 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.

14. 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 preceding agenda items.

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.

15. 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.

16. Next steps

17. Closure of the hearing