

ISH8 Shipping and Navigation: Hearing Action Points

Application by Vattenfall Ltd for an Order Granting Development Consent for the Thanet Offshore Wind Farm Extension (OWFE).

Actions arising from the **Issue Specific Hearing 8** (ISH8) held at Discovery Park, Sandwich on **16 and 17 April 2019**.

Please note that the list of Action Points for ISH8 have been split into two documents. A document containing the actions relating to Natural Environment and Fishing matters was published on 18 April 2019. This document contains actions relating to Shipping and Navigation matters.

Action Points

	Action	Party	Deadline
1	Submission of material presented at ASI2 on 15 April 2019 Port of Tilbury London Limited to submit to Examination Library: <ul style="list-style-type: none"> • Copy of presentation given at ASI2 on 15 April 2019 • Masterplan of facility DP World London Gateway to submit <ul style="list-style-type: none"> • Masterplan of facility 	Port of Tilbury London Ltd and London Gateway	D5
2	Differentials between NRA and NRAA Applicant to submit in tabular form the differentials between the Application NRA, the Outline Addendum submitted following the 29 March workshop and the NRA Addendum (NRAA).	The Applicant	D5
3	Shipping and Navigation Expert Witness credentials: To help the ExA to assess the relative credibility of expert witnesses, the Applicant to submit more detailed credentials of its Shipping and Navigation expert witnesses, including where available experience of navigation of or command of vessels in the Thames Estuary and the largest type and size of vessels commanded, explaining in detail the relevance of that experience to understanding the specific safety hazards of navigation in the vicinity of the Thanet Wind Farm or equivalent.	The Applicant	D5



Action	Party	Deadline
<p>4</p> <p>Policy Position on Sea Lanes or Routes IPs to submit final policy positions on the questions of:</p> <p>a) which (if any) routes approaching London and Sheerness ports does the definition of '<i>...recognized sea lanes essential to international navigation...</i>' apply, with reference to UNCLOS 1967; and whether the proposed TEOW development could cause interference with their use (NPS EN-3 para 2.6.161).</p> <p>And:</p> <p>b) which (if any) routes approaching London and Sheerness ports does the definition of '<i>strategic routes essential to regional, national and international trade</i>' (NPS EN-3 para 2.6.162) apply, and whether or how the proposed TEOW development could cause '<i>disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports</i>' (NPS EN-3 para 2.6.162)</p> <p>Applicant to respond by D8</p>	<p>Ports, MCA, Trinity House, UK Chamber of Shipping and other relevant IPs</p>	<p>D7 and D8</p>
<p>5</p> <p>Policy Considerations – EN-3 para 2.6.166 Relevant IPs to respond in writing to the question of whether the scheme has been '<i>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</i>'?</p>	<p>Relevant IPs</p>	<p>D5</p>
<p>6</p> <p>IMO GPSR 1974 Para 6.4 The Applicant to respond in writing on the extent to which the IMO General Provisions on Ships' Routeing (GPSR) 1974 applies to navigation in the vicinity of the TOWF and the London Pilot Council D4C submission arguing that the development presents an obstacle to vessels approaching from the east and</p>	<p>The Applicant</p>	<p>D5</p>



Action		Party	Deadline
	north-east and/or an interference with forward visibility.		
7	Applicability of the UNESCO Guidance on MSP The Applicant to comment on the applicability of UNESCO Guidance on MSP to the proposed development and submit the guidance document into the examination.	The Applicant	D5
7	Risk Controls Port of London Authority to confirm in regard to the risk controls identified in Table 13 of the Navigation Risk Assessment Addendum: ' <i>Risk Controls identified as part of PLA NRA Working Group 2015 on the Safety of Navigation in the North East Spit Area</i> ' which controls (if any): <ul style="list-style-type: none"> • have been adopted • have been definitively rejected 	Port of London Authority	D5
9	Positions on Sea Room Availability at NE Spit Racon Buoy The Applicant to submit a composite plan comparing the dimensions submitted by the London Pilots Council with their plan as submitted at D4C and those of the Applicant submitted at D4 showing the separation distances between the SEZ boundary, the RLB and the NE Spit Racon Buoy, Elbow buoy and the intersection of the North Foreland Sector light and the no-anchorage zone, overlaid on data plots of density of AIS vessel tracks for high windage car carrier vessels and cruise passenger vessels.	The Applicant	D5
10	Maritime and Coastguard Agency oral submissions Maritime and Coastguard Agency and THLS to submit a written copy of their oral submissions in relation to ISH8 Agenda Items 5 and 6 at D5. They are requested to add observations on the conduct of the March and April stakeholder workshops including whether they consider that there might be scope	Maritime and Coastguard Agency and THLS	D5



Action		Party	Deadline
	for additional mitigation and risk controls to be introduced to achieve or to reduce to lower in the range of As Low as Reasonably Practicable (ALARP) mitigation of any of the primary navigation risks that have been identified by the Applicant.		
11	<p>NRA Risk Controls exercised by other organisations</p> <p>The Applicant to set out in writing to what extent does the NRA (and not just the NRAA) rely on:</p> <ul style="list-style-type: none"> a) risk controls being introduced by other parties to reduce baseline risk; or b) risk control during Operational and Maintenance phase of the proposed development in the context of this NRA needing to be managed by PLA; or c) additional risk controls that are suggested in the NRA that IPs contend should in fact be considered as embedded, with the consequence of producing a difference in residual risk scores. 	The Applicant	D5
12	<p>Effective density of use of inshore route</p> <p>Applicant to reconsider as a measure of density of large commercial vessels using the inshore route its assessment of 11 vessels on average per day, after taking into account its analysis of tidally restricted periods during which no vessels over a certain size pass that route; and clarify which "gate" this analysis refers to (in response to query raised by Richard Jackson of ESL).</p>	The Applicant	D5
14	<p>Check if risk control proposed is already embedded as an MC requirement</p> <p>The Applicant to check and confirm in written submission in response to the question raised by Mr Nick Salter of MCA whether there is double counting of</p>	The Applicant	D5



Action		Party	Deadline
	additional mitigation proposed and already embedded by virtue of being an MCA compliance requirement (optimisation of line of orientation and symmetry).		
15	Future Traffic Growth Assumptions The Applicant to provide the underlying assumptions used and basis for arriving at a future traffic growth assumption of 10%.	The Applicant	D5
16	Proposal of a Structures Exclusion Zone (as opposed to a change in order limits) The Applicant to explain <ul style="list-style-type: none">• The reasoning for proposing a SEZ rather than a change in order limits; and• what activities may be carried out in the DCO can be done within the SEZ during the different project phases.	The Applicant	D5
17	Potential Commercial, Employment or Economic Effects All IPs to present evidence on potential commercial, employment or economic consequences of effects of the proposed development.	All IPS	D5
18	Consultation with the Port of Sheerness The Applicant to confirm whether the Port of Sheerness was consulted in any way in regard to the HAZID workshop or the development of the NRAA.	The Applicant	D5
19	Ship traffic data PoT and LGPL to clarify their REP3-070 submission by submitting evidence on numbers of ships and volume of freight or passengers being served at Tilbury and London Gateway in relation to overall numbers of ships and volume of freight or passengers served at London and Sheerness ports, by type of cargo or passenger and for a period or periods relevant to the NRA; with an estimate of	PoT and LG	D5



Action		Party	Deadline
	<p>the proportion of which are passing over NE Spit or transferring a pilot at or near NE Spit diamond.</p> <p>The ExA is interested in passenger/cruise vessel as well as freight utilisation.</p>		
20	<p>Updated simulation report</p> <p>The ExA has considered requests that an updated simulation report be carried out to inform the NRA/ NRAA process in the light of the SEZ material change. The ExA has declined to make a procedural decision that such a study should be prepared at this time, for reasons set out fully in Annex A to this action list.</p> <p>However, the Annex provides an action for the Applicant and ISH8 IPs / OPs to:</p> <ul style="list-style-type: none">• comment on what the precise brief for such a body of work might be;• respond to submitted comments by others on this point; and• the Applicant to exercise its final right of reply on all such submissions.	The Applicant and all ISH8 IPs /OPs	D6 D7 D8

Matters Arising from Issue Specific Hearing 8 (ISH8)
Consideration of a request for a procedural decision on a further pilotage simulation study.

At Deadlines 4 and 4B, the Applicant submitted a request for a material change to the application (the 'material change request') to provide for a Structures Exclusion Zone ('SEZ') within the offshore wind turbine generator (WTG) array area. The purpose of the SEZ is to provide additional sea room free of permanent structures including WTGs for vessels passing through the inshore route, with a particular focus on the argued need for additional sea room in the vicinity of the North East Spit Diamond pilot transfer area. The material change request was accompanied by documentation that (in summary terms) forms addenda to the Navigation Risk Assessment (the 'NRAA') and to the Environmental Statement (the 'ES').

The Navigation Risk Assessment ('NRA') accompanying the application as originally submitted was supported by a Pilot Transfer Bridge Simulation Report [[APP-090](#)] (the 'simulation report'). This recorded simulated pilot operations in waters in which virtual sea-room in the inshore route and around the North East Spit Diamond was reduced by a representative model of the proposed offshore windfarm development and where pilots and launch coxswains were able to undertake simulated vessel approaches and transfers.

At ISH8, a number of maritime Interested Parties and Other Persons (IPs/OPs) raised concerns that the NRAA was not accompanied by an updated simulation report, taking account of the proposed SEZ. Concerns raised varied between the positions of IPs/OPs who took the view that an updated simulation report was immediately necessary to assist the Examination and the positions of those (including the Maritime and Coastguard Agency (MCA) and Trinity House Lighthouse Service (THLS)) who took the view that an updated simulation report was not strictly necessary, but that if one were to be prepared, it should be prepared prior to the Secretary of State's decision on the application. The Examining Authority (ExA) was asked to decide whether to request the Applicant to prepare an updated simulation report.

The Applicant's position in summary was that as the effect of the SEZ would be to increase sea room in the inshore route and in the vicinity of the North East Spit Diamond pilot transfer area over that available in the simulation report [[APP-090](#)] (which in its view had in any case recorded satisfactory simulated events), an updated simulation report was not necessary.

ExA response

Having considered this request and the position of IPs/OPs present at ISH8, the ExA takes the view that an updated simulated report is not immediately

necessary. On this basis, the ExA declines to make a formal procedural decision that such a report should be prepared by the Applicant at this stage of the Examination.

Reasoning

The ExA has reached this position having taken the following matters into account.

- There is no formal policy or legal provision requiring submission of an updated simulation report. A simulation report is undoubtedly one of a group of prospectively useful tools or techniques to inform the drafting of an NRA (or NRAA), but it is only one such.
- In sequential terms, to add most value to an NRA (or NRAA), a simulation exercise would need to be undertaken at the outset, as part of the hazard identification process. That has not happened in this instance and hence the NRAA has been formed without the benefit of a simulation report as a preliminary input.
- In such circumstances, if an updated simulation report were to be prepared now and were to include any findings that did anything other than validate the NRAA, there would be a corresponding need to revise the NRAA. The ExA considers that it would be likely that an updated simulation report could give rise to a further change to the application as submitted. This could be a material change and, even if immaterial, to be effectively considered could require to be meaningfully and appropriately consulted upon with IPs/OPs.
- Meanwhile, the Applicant is already engaging stakeholders in, and providing them with an opportunity to respond to the SEZ material change request.
- Whilst the ExA has accepted the SEZ material change request, having regard to the Planning Inspectorate's Advice Note 16 (AN16), there is only just adequate time to enable IPs/OPs to engage fully with it. A process enabling written representations to be made on it ends on the penultimate day of the statutory six-month examination period (Deadline 8).
- The scope, definition and precise purpose of an updated simulation report has not been agreed between the Applicant and IPs/OPs and, to this extent, even if the ExA were to request one, a further round of dialogue between stakeholders would be required to better define it, before the preparation process could commence.
- It follows that any meaningful consultation on an updated simulation report would not be able to be completed within the six-month examination deadline. The ExA would either have to abbreviate or truncate a process to a level significantly less or beneath that anticipated as appropriate in AN16, or would have to report to the Secretary of State on the basis of not having sight of all responses to any such consultation. Similar considerations (although to a more limited extent) would still apply if an updated simulation report were not to give rise to a material change: it would still be a thing that required a measure of consultative engagement with IPs/OPs.
- For these reasons, AN16 itself anticipates that there comes a time in all National Infrastructure (NI) Examinations beyond which change processes



cannot appropriately be initiated or accepted by an ExA. In relation to a request for an updated simulation report responding to a brief that is not fully formed, that time is now.

- Having regard to advice from both the MCA and THLS, the ExA has not closed its mind to the possibility that an updated simulation report might assist the Secretary of State as decision-maker. During the reporting period, the ExA will consider whether the preparation of such a report might assist the Secretary of State and if appropriate it may recommend that one be prepared and consulted upon during the decision-making period. However, it should be clear that such a recommendation would only be made if at that time the ExA were to consider that such work would be both necessary and proportionate.
- To ensure that there is certainty over the brief for any such work, the ExA invites the Applicant, all IPs and OPs to make the following submissions:
 - By Deadline 6 – to comment on what the precise brief for such a body of work might be;
 - By Deadline 7 – to respond to submitted comments by others on this point; and
 - By Deadline 8 – the Applicant to exercise its final right of reply on all such submissions.
- Finally, it should be recorded that, on the basis that the ExA has declined the request at this time, whilst this document constitutes a record of that position to assist the originators of the request made at ISH8 and those affected by it, it is not a formal procedural decision and does not require to be made pursuant to Rule 9 of the Examination Procedure Rules 2010 (EPR).