

Application by Vattenfall Wind Power Ltd for the Thanet Extension Offshore Wind Farm Development Consent Order
The Examining Authority's final written questions and requests for information under Rule 17 (EPR) (R17Qs)
Issued on 30 May 2019

The following table sets out the Examining Authority's (ExA's) final written questions and requests for information under Rule 17 of the National Infrastructure (Examination Procedure) Rules 2010 (EPR) (R17Qs).

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annexe B to the Rule 6 letter of 9 November 2018. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

Column 2 of the table indicates which Interested Parties (IPs) and Other Persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests. As there will be no further written questions in this Examination, respondents are requested to answer as clearly and completely as possible.

Each question has a unique reference number which starts with R17Q (indicating that it is from the R17Q question set) and then has an issue number and a question number. For example, the first question on biodiversity issues is identified as R17Q4.1.1. When you are answering a question, please start your answer by quoting the unique reference number.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team. Please contact:

ThanetExtension@planninginspectorate.gov.uk

and include 'Thanet Extension R17Q' in the subject line of your email.

Unless otherwise stated, responses are due by **Deadline 6A: Monday 3 June 2019**. Comments on responses may be made by Deadline 7: Thursday 6 June 2019. The Applicant may make a final reply to any comments at Deadline 8: Monday 10 June 2019 at 5pm.

Abbreviations used

PA2008	<i>The Planning Act 2008</i>	NPS	<i>National Policy Statement</i>
Art	<i>Article</i>	NRA	<i>Navigation Risk Assessment</i>
ALARP	<i>As Low As Reasonably Practicable</i>	NRAA	<i>Navigation Risk Assessment Addendum</i>
BoR	<i>Book of Reference</i>	NSIP	<i>Nationally Significant Infrastructure Project</i>
CA	<i>Compulsory Acquisition</i>	R	<i>Requirement</i>
dDCO	<i>Draft DCO</i>	SI	<i>Statutory Instrument</i>
EM	<i>Explanatory Memorandum</i>	SoS	<i>Secretary of State</i>
ES	<i>Environmental Statement</i>	TOWF	<i>Thanet Offshore Wind Farm (operational)</i>
ExA	<i>Examining authority</i>	TEOWF	<i>Thanet Extension Offshore Wind Farm</i>
HSE	<i>Health and Safety Executive</i>	TP	<i>Temporary Possession</i>

The Examination Library

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010084/EN010084-000737-Internal%20Examination%20Library%20PDF%20Version.pdf>

It will be updated as the examination progresses.

Citation of Questions

Questions in this table should be cited as follows:

Question reference: issue reference: question number, eg R17Q4.1.1 – refers to the first biodiversity question in this table.

R17Qs Question to:		Question:
4.1.	Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))	
4.1.1.	The MMO, the Applicant	<p>Potential Construction Noise Effects on Fish: submissions and evidence from the MMO</p> <p>The ExA notes the respective evidence submitted at D6 by both the Applicant and the MMO in respect of the potential noise effects on herring and sole. This remains a contended subject matter with opposing evidence. Whilst progress toward agreement would be preferable, the ExA is mindful of the very limited time remaining in this examination.</p> <p>In the absence of agreement, the following evidence is sought from the MMO by D7 with comments from the Applicant by D8:</p> <ul style="list-style-type: none"> a) Does the MMO hold any further evidence from its advisors or stakeholders on this matter that could usefully be submitted into the examination for consideration by the ExA? If so, please submit it at D7. (This could include scientific advice from CEFAS and/or comments from fishing and fisheries representative bodies.) b) The TOWF licence referred to a seasonal restriction period 'between mid-February and the end of April'. In the interests of precision and enforceability in this case, can the MMO specify particular dates for such restrictions? If so, what would they be and on what basis? c) As granted, the TOWF licence restricted noisy activities in the mid-February to end of April period, so as to avoid the main spawning period for Thames herring. In addition to a similar provision for this case, the MMO is also recommending a restriction from the end of November to

R17Qs	Question to:	Question:
		<p>January for the Downs stock. Could the MMO set out the reasons for the different approach in this case?</p> <p>d) If the MMO remains of the view that seasonal restrictions are necessary in this case, please could it provide draft wording for inclusion in the DMLs that it considers would provide appropriate security?</p> <p>e) The Applicant contends that the seasonal restriction forming part of the marine licence condition for the TOWF (referred to in (c) above) was subsequently removed, citing the following document by way of reference ('Review of Environmental Data Associated with Post-Consent Monitoring of Licence Conditions of Offshore Wind Farms', MMO, April 2014¹ at pg 87). Can the MMO please confirm whether this was indeed the case, and if so, when and why the condition was removed?</p> <p>f) Does the MMO consider that it is necessary to impose any seasonal restrictions in relation to noise effects on sole spawning grounds? If so, on what basis and what, precisely, would be the restriction period?</p>
4.1.2.	The MMO, the Applicant	<p>Potential Construction Noise Effects on Fish: submissions and evidence from the Applicant</p> <p>Further the issue raised in R17Q4.1.1, in the absence of agreement, the following evidence is sought from the Applicant at D7 with comments from the MMO by D8:</p> <p>a) Could the Applicant please provide an indication of the implications for the overall construction programme in the scenario that one or both of the two seasonal restrictions sought by MMO (Nov-Jan and Feb-April) were imposed?</p>

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/317787/1031.pdf

R17Qs	Question to:	Question:
		<p>b) In the scenario that both seasonal restrictions were imposed, could the overall construction period be delivered within the maximum time-scale envisaged within the originally assessed Rochdale Envelope?</p> <p>c) Does the Applicant consider that there would be any other implications (eg financial, commercial, environmental) of a longer overall construction period required should the combined seasonal restriction(s) be imposed?</p> <p>d) The Applicant's reservations about the effectiveness and justification for the use of bubble curtains are noted from responses to ExQ1 [REP1-024] and Appendix 27 Annex A of the Applicant's D6 submission. However, could bubble curtains or other 'at source' mitigation techniques be used to remove or limit the extent of seasonal restrictions? If so, how would they be secured within the DCO/DML?</p> <p>e) Is there any need for UXO clearance to be similarly seasonally restricted to piling?</p>
4.1.3.	National Federation of Fishermen's Organisations and the Applicant	<p>National Federation of Fishermen's Organisations (NFFO)</p> <p>The NFFO was invited to participate in the Examination as an Other Person (OP) at D6 and submitted a copy of its advice to the MMO on this matter into the examination.</p> <p>a) Could the NFFO please provide a response to the evidence advanced by the Applicant in relation to effects on herring and sole and to the material provided by all parties in response to ExQ3.1.5 by D7?</p> <p>b) The Applicant is invited to respond at D8.</p>

R17Qs	Question to:	Question:
4.1.4.	Thanet Fishermen's Association and other fishing and fisheries IPs	<p>Other Fishing and Fisheries Interests Interested Parties with interests in fishing and fisheries are invited to comment on the matters raised in questions R17Q4.1.1, 2 and 3 at Deadline 7 and on the responses provided to these questions at Deadline 8. The MMO and the Applicant are invited to respond to any responses to this question at Deadline 8.</p>
4.1.5.	The Applicant	<p>Documents Informing HRA Conclusions Natural England raises at para. 9.1.1 of its D6 submission that, in the light of the large number of clarification notes and other evidence relating to HRA matters submitted during the examination, it could be difficult for discharging authorities at the post-consent stage to understand all of the evidence that has informed the HRA conclusions in this case. The ExA notes this position. Please could the Applicant:</p> <ul style="list-style-type: none"> a) Submit at D7 a single document that lists all of its examination submissions that inform, supplement or clarify its HRA findings. For simplicity, this could be a document that provides a summary updated version of the information presented in summary tables 1-3 contained in [REP5-016]. b) Propose a way to secure this document so that it may be easily discoverable for potential future users, for example as a new annex to the Explanatory Memorandum.
4.1.6.	The Applicant	<p>Seasonal Restriction: Onshore Works Natural England highlights the commitment in paragraphs 5.3.19-5.3.21 of the latest OLEMP [REP1-069] to a seasonal restriction on all driven and</p>

R17Qs	Question to:	Question:
		<p>percussive piling work within Pegwell Bay Country Park and to the erection of screening fencing for any works within 250 meters of intertidal habitats that are in direct line of sight of intertidal habitats during the same season. The ExA notes that these are mitigation references 5.8 and 5.9 of the Rev.D Schedule of Mitigation submitted at D6 and that security is also currently provided through the Construction Environmental Management Plan. Natural England states that these mitigation measures are “required to rule out any Adverse Effect on Integrity on the SPA”, which is understood to refer to the Thanet Coast and Sandwich Bay SPA, and that they should therefore be included on the face of the DCO in the same way that Requirement 26 imposes a seasonal restriction on works in the inter-tidal area.</p> <p>a) Does the Applicant accept that these mitigation measures are required to rule out an Adverse Effect on Integrity (AEoI) of the SPA?</p> <p>b) Does the Applicant agree to including these measures on the face of the DCO, as requested by Natural England? If so, please provide the suggested drafting at D7.</p> <p>c) If not, could the Applicant please set out the reasons for taking a different approach in this case to that taken in respect of the inter-tidal area under R26.</p>
4.1.7.	Natural England, The Applicant	<p>Goodwin Sands pMCZ</p> <p>Paragraph 2.5 of Natural England’s D6 letter considers that the Applicant’s commitment to dispose of sediment within 500 m of Goodwin Sands pMCZ should be sufficiently secured within the DCO/DML. The ExA notes that this is reflected as mitigation reference 5.5 of the updated Schedule of Mitigation (Rev. D) which points to the Cable Specification and Installation and</p>

R17Qs	Question to:	Question:
		<p>Monitoring Plan but that does not appear to be explicitly stated on the face of the DCO/DML.</p> <p>a) Noting that the Schedule of Mitigation will be a certified document, does NE consider that sufficient security for the commitment has been provided? If not, please could Natural England articulate how they would wish to see this secured within the DCO at Deadline 7.</p> <p>b) The Applicant is also invited to comment on this matter and provide any revised drafting by Deadline 8.</p>
4.1.8.	The Applicant, Natural England	<p>Schedule of Mitigation, Rev.D</p> <p>The ExA notes that Rev. D of the Schedule of Mitigation contains a number of references to Landfall Option 2, which has been removed from the project description.</p> <p>a) Given that the Schedule of Mitigation is to become a certified document, could the Applicant please remove all references to withdrawn Landfall Option 2 from the document and also undertake a sense check of the whole document to ensure that it reflects the latest position.</p> <p>b) Natural England is invited to provide comments on drafting by Deadline 7.</p>
4.1.9.	The Applicant, Natural England	<p>Security for the Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP)</p> <p>Paragraph 3.4.1 of Natural England's D6 letter raises some questions about the security of the contents of the SMRMP. Could the applicant please respond to these points, specifically:</p>

R17Qs Question to:		Question:
		<p>a) Should the DCO include a requirement for an updated version of the SMRMP to be submitted to the relevant authorities prior to construction, in a similar way to the other pre-construction plans and documentation dealt with under conditions 11 and 13 of Schedule 12? If so, please provide the revised drafting. If not, please provide reasons.</p> <p>b) Whilst the monitoring associated with the SMRMP is secured in conditions 15 and 17 of Schedule 12, does specific provision need to be made within the DCO/DMLs to secure any mitigation arising from the SMRMP? If so, please provide the revised drafting. If not, please provide reasons.</p> <p>c) Natural England is invited to comment on any revised drafting by Deadline 7.</p>
4.2.	Construction	
	There are no construction questions in this question set.	
4.3.	Compulsory Acquisition, Temporary Possession and other Land or Rights Considerations	
4.3.1.	The Applicant, the Crown Estate	<p>Crown Lease: effect on CA case</p> <p>In ExQ2.3.1 response a) [REP5-002], the Applicant records that the Crown Estate has prepared a draft agreement for lease and a draft lease for the array area and the cable corridor. However, it also advises that it remains the case that the Crown Estate will not enter into legal relations with the Applicant until a Plan Level HRA for offshore wind farm extensions including the proposed development is complete – after the closure of the examination. The timing for completion of this exercise is currently set at ‘summer 2019’ [REP3-088]. It may be concluded within the SoS decision period, but that is not certain. Nor are the outcome and timing of lease decisions thereafter certain.</p>

R17Qs	Question to:	Question:
		<p>In its response b), the Applicant provides a view that it <i>'does not consider that the negotiations regarding the agreement for lease with the Crown Estate should influence the decision on the application'</i>.</p> <p>Our remaining concern relates to the interface between the Plan level HRA decision, the conclusion of agreements for relevant leases and the granting of those leases and the CA powers sought in the dDCO. The HRA decision is a discretionary decision (and it is one on the outcome of which the Crown Estate declines to provide us with 'comfort' – see [REP3-088]). It is possible that the Crown Estate could conclude from the Plan Level HRA that the proposed extension should not proceed and hence determine not to agree to or to grant leases. Or it could determine not to agree to or to grant leases to the Applicant for other (broadly commercial) reasons.</p> <p>The Applicant seeks CA powers over land, broadly to provide for the construction and operation of an onshore substation and cable connection for the proposed development to the grid. If further to a Plan Level HRA or a lease decision by the Crown Estate, the offshore array area was not to be developed, there would be no need for the onshore infrastructure and it too would not be constructed.</p> <p>In this context, the Applicant has offered to provide drafting in the dDCO that prevents 'the exercise of any compulsory purchase powers until the agreement for lease has been concluded'.</p> <p>a) The current draft wording (in Art 17(3) of the Deadline 6 DCO (Appendix 49)) only makes reference to a single lease covering Work No 1. To</p>

R17Qs	Question to:	Question:
		<p>address the principle identified and agreed to by the Applicant above, does this need to be expanded to cover a second lease for the offshore cable alignment (the OFTO lease).</p> <p>b) If so, the Applicant is asked to provide a form of drafting (although see below).</p> <p>c) In terms of security, blocking the CA until the leases are in place assumes the Crown will do as it has said, and only grant leases if the Crown considers that the Plan Level HRA permits the development. So, in theory, there is a risk that the Crown could grant leases for the development knowing that it does not comply with the Plan Level HRA – a decision which could of course be challenged in the courts. However, given the stated intent of the Crown Estate, this would appear to be a minimal risk. Does the Applicant and do relevant IPs agree?</p> <p>A possible form of drafting for a revised Art 17(3) could be as follows:</p> <p><i>(3) The undertaker may not exercise any powers of compulsory acquisition authorised by this Order until it has:</i></p> <p><i>(i) acquired a legal estate in the seabed in the form of an agreement for lease from the Crown Estate which includes the offshore wind turbine generating station comprised in Work No. 1;</i></p> <p><i>(ii) acquired a legal estate in the seabed in the form of an agreement for lease from the Crown Estate which includes Work No. 3; and</i></p> <p><i>(ii) provided the Secretary of State with written evidence of those agreements.</i></p> <p>The Applicant's, IPs and OPs views are sought on this.</p>

R17Qs	Question to:	Question:
4.3.2.	The Crown Estate	<p>Crown consent: PA2008 s135</p> <p>In its submission to D6 (which has been categorised by the ExA as a late submission to D5 as it addresses ExQ2.3.4 [PD-016]) the Crown Estate addresses the ExA's question about the grant of consent under PA2008 s135(2). Having considered that submission, the ExA retains a concern with the consent provided, because of the way the letter is worded:</p> <p>"Accordingly, the Commissioners confirm their consent for the purpose of s135(2) of the Act to the inclusion of the following "Crown rights" wording in the Order at Article 40..."</p> <p>It appears to the ExA that the Crown Estate may have wished to say that it grants consent to the various provisions of the order which might apply to Crown land subject to the inclusion of Article 40. Unfortunately, that is not what the letter says – it just consents to the inclusion of Article 40.</p> <p>PA2008 s135(2) reads as follows: <i>"An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision."</i></p> <p>It follows that any provisions of the DCO outwith Art 40 itself which apply in relation to Crown land do not currently benefit from s135(2) consent. There are various provisions of the Order which might apply in relation to Crown land (other than compulsory acquisition of rights which would be covered by s135(1)). For example, Art 15 includes powers to enter land for survey/investigation purposes and to make trial holes. While Art 15(4) makes</p>

R17Qs	Question to:	Question:
		<p>the power subject to Crown consent, it only does so for the making of trial holes, so the power to enter would still apply to Crown land. Based on the wording of the consent given in the Crown Estate letter, that provision does not currently have Crown consent.</p> <p>For this reason, the ExA and/or the SoS at the point of approval would need a further submission confirming exactly what the Crown Estate intended to give consent to under s135(2). If the consent is given for the order as currently worded, there would be no consent for a later version of the order with revised wording. So, if the SoS makes amendments to the wording (which is usually the case), the consent might cease to apply and would need to be reconfirmed. Drawing these matters together, the Crown Estate is requested to confirm the following:</p> <ul style="list-style-type: none"> a) Consent in principle to all of the various provisions in the DCO which might apply to Crown land subject to the inclusion of Article 40; and b) that it notes and agrees the possible need to review and make a final letter of consent to the SoS, should the drafting of the DCO change.
4.4.	Draft Development Consent Order (DCO)	
4.4.1.	The Applicant, Kent County Council, Dover District Council, Thanet District Council and the MMO	<p>Definitions of commencement and pre-commencement works</p> <p>The Applicant is asked to review the definitions of 'commence' on the basis that R32 (and related DML provisions) provide that '[n]o pre-commencement works may commence', a form of drafting that relates pre-commencement works to 'commence', which is a defined term.</p>

R17Qs	Question to:	Question:
		<p>c) Does a formulation "[n]o pre-commencement works may be carried out" address this point?</p> <p>d) If so, the Applicant is requested to provide amended drafting in a consolidated dDCO.</p> <p>e) If not, the Applicant is requested to address the point with alternative drafting and reasoning.</p>
4.4.2.	<p>The Applicant, Kent County Council, Dover District Council, Thanet District Council and the MMO</p>	<p>The relationship between arbitration and appeals Art 5(11), Art 36 and new Sch 14 in the Applicant's D6 DCO (Appendix 49) contain new provision for what amounts to an either way optional mechanism for the applicant to submit an appeal or to take a matter to arbitration. ('[T]he undertaker may refer the matter for determination in accordance with article 36 (arbitration) or appeal the decision in accordance with Schedule 14 (procedure for appeals).')</p> <p>This provision is confusing and apparently without precedent in a made Order.</p> <p>a) If there is precedent for such an either way provision, the Applicant is asked to refer to it.</p> <p>b) Parties other than the Applicant are requested to comment upon it at Deadline 7.</p> <p>c) The Applicant is requested comment at Deadline 8.</p> <p>In the absence of a clear justification or basis for an 'either' way provision, parties are asked to identify whether they consider that:</p> <p>d) Sch 14 appeal provisions should replace arbitration;</p>

R17Qs Question to:		Question:
		<p>e) Arbitration provisions should replace Sch 14 appeals; f) A more clearly defined and confined role for each procedure should be drafted for; g) One or both procedure(s) should not extend to a particular body (for reasons); and/or h) A particular identified procedure should be removed from the dDCO.</p> <p>It should be noted that it is not clear that the SoS would agree to accept the appeals process in Sch 14 and so the ExA may recommend its removal. The Applicant should submit drafting to manage such circumstances.</p>
4.4.3.	The Applicant, Kent County Council, Dover District Council, Thanet District Council and the MMO	<p>Sch 14: Appeals The proposed appeals process in Sch 14 imports a statutory role for the Law Society. This appears to be without precedent in made Orders under PA2008.</p> <p>a) Please provide any precedent for this provision. b) Is the Law Society an appropriate body for the role proposed? c) Please provide evidence that the Law Society has agreed to discharge the proposed role.</p>
4.4.4.	The Applicant	<p>Certification of plans (Art 35) As drafted at D6 (Appendix 49), this provision allows the amendment of documents which have been certified by the SoS. This removes certainty for the SoS as to what consent is being granted for. The Planning Inspectorate Advice Note 15 (AN15) identifies that the inclusion of 'tailpieces' authorising the approval of changes to the scope of the Authorised Development as applied for and examined is not acceptable (para 17.4).</p>

R17Qs Question to:		Question:
		<p>a) Are the provisions of Art 35 of the nature of a tailpiece? b) If so, the ExA requests the Applicant to amend the drafting to address the point raised in AN15.</p>
4.4.5.	The Applicant	<p>Sch 8 Part 2 Para 13: definition of apparatus The undertaker is defined in Art 2 as Vattenfall Wind Power Ltd. The definition in Para 13 states: “in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by the <u>undertaker</u>”. The Applicant is requested to amend the drafting to “that electricity undertaker” to avoid confusion with the Art 2 definition.</p>
4.4.6.	The Applicant	<p>Sch 8 Part 2 Paras 16 and 17: clarification of drafting These paragraphs are not well-drafted, and the Applicant is requested to provide drafting to improve clarity and comprehension.</p>
4.4.7.	The Applicant	<p>The Certified Environmental Statement For continuity, R17Q4.8.1 in Matter 4.8 (Environmental Statement General) develops ExQ3.8.1, but also has implications for DCO drafting.</p>
4.4.8.	The Applicant, Natural England	<p>Natural environment security Attention is also drawn to the questions in matter 4.1 (Biodiversity, Ecology and Natural Environment) above that have implications for DCO drafting.</p>
4.5.	Debris, Waste and Contamination	
	There are no debris, waste and contamination questions in this question set.	

R17Qs Question to:		Question:
4.6.	Electric and Magnetic Fields (EMFs)	
	There are no EMF questions in this question set.	
4.7.	Electricity Connections and Other Utility Infrastructure	
4.7.1.	Shakespeare Martineau for National Grid plc	<p>Withdrawal of National Grid plc Relevant Representation</p> <p>On 23 May 2019, Shakespeare Martineau for National Grid plc wrote to the ExA withdrawing their client's RR. The correspondence refers to the 'Thanet Offshore Windfarm Development Consent Order' and is in a .pdf file entitled 'Vanguard NG wdraw'. Please confirm that the correspondence relates to the application for development consent for the Thanet Extension Offshore Wind Farm Extension under reference EN010084 and has not been made in error in relation to another proposal.</p>
4.8.	Environmental Statement General	
4.8.1.	The Applicant	<p>The Certified Environmental Statement</p> <p>The Applicant's response to ExQ3.8.1 sets out a list of eight documents that it states: "are intended to form part of the certified Environmental Statement". These eight documents are now included in Schedule 13 of the dDCO. The ExA welcomes this addition and the commitment to update Schedule 13 at each subsequent deadline, if required. However, the ExA notes that the Art 2 definition of the 'Environmental Statement' remains unchanged in the latest dDCO. Due to the extensive use of the Rochdale Envelope approach to offshore design parameters, there are a series of provisions in the dDCO that are limited "to the extent that this has been assessed in the Environmental Statement authorised by this Order" or allowing variation from the order where it "does not give rise to any materially new or different environmental effects to those assessed in the Environmental Statement". The ExA is</p>

R17Qs	Question to:	Question:
		<p>concerned that the Applicant's new drafting does not fully address the fact that the submitted ES has been updated and clarified to such an extent during the examination that the definition of the 'Environmental Statement' should be broader than simply the original document submitted with that title.</p> <p>a) Can the Applicant please confirm whether it agrees to making further amendments to the dDCO wording to address this point? b) If so, please could it propose new drafting (and see below). c) Schedule 13 appears to list the document entitled 'An addendum to the Environmental Statement (ES) assessing the SEZ proposal (PINS Ref REP4B-010)' twice. Please could the Applicant check and if necessary, correct this.</p> <p>One approach to (b) may be to add a new Schedule containing all documents intended to form part of the certified ES and for the article 2 definition of the Environmental Statement to be revised to refer to all documents within that Schedule. However, the ExA is open to any drafting that achieves the same outcome by D7.</p>
4.9.	Fishing and Fisheries	
	Fishing and fisheries questions relating to species management and sustainability have been included in the Biodiversity, Ecology and Natural Environment questions (Matter 4.1), to which fishing and fisheries IPs and OPs are requested to refer.	
4.10.	Historic Environment	
	There are no historic environment questions in this question set.	
4.11.	Marine and Coastal Physical Processes	

R17Qs	Question to:	Question:
	There are no marine and coastal physical processes questions in this question set.	
4.12.	Navigation: Maritime and Air	
4.12.1.	<p>Marine Management Organisation, The Applicant, Port of London Authority / Estuary Services Ltd, London Pilots Council, Port of Tilbury London Ltd, London Gateway Port Ltd, Port of Sheerness Ltd, Maritime and Coastguard Agency, Trinity House Lighthouse Service</p>	<p>Pilotage simulation In their letter covering the Deadline 6 submission the Applicant refers to its proposed approach to a further "pilotage simulation", which is detailed in Appendix 38.</p> <p>The ExA notes that, if such a simulation were to be undertaken and concluded after Deadline 8, on the basis that the ExA cannot consider any document submitted after closure of the Examination, it could not be taken into account in the ExA's recommendations. Further, unless it were to be concluded by Deadline 7, there would be no adequate mechanism for the ExA to take account of IPs and OPs responses to it. These timelines do not appear to be immediately deliverable.</p> <p>There is a possible mechanism for the Applicant to submit such additional evidence directly to the SoS during the decision-making period.</p> <p>The Applicant points out that if an additional pilotage simulation were to be prepared and submitted at that time, it would then be necessary for it – "and the results of it that may or may not necessitate changes to application documentation" – to be properly consulted on, and for the SoS to have time to consider and take into account those changes and associated consultation responses.</p> <p>The Applicant also suggests that "...should the Examining Authority be of the view that a pilotage simulation could still be necessary to inform the SoS'</p>

R17Qs	Question to:	Question:
		<p>decision ... a procedural decision is made before close of Examination recommending that the Applicant undertakes such a simulation voluntarily and in particular that all associated parties and stakeholders continue to engage with the Applicant in order to facilitate and discuss any pilotage simulation and its results."</p> <p>The ExA has considered this request with care but indicates that it cannot make a procedural decision that binds the Applicant, IPs and OPs after the closure of the Examination. Rule 2 of the National Infrastructure (Examination Procedure) Rules 2010 (EPR) defines the term "procedural decision", in relation to an application and under those rules as meaning 'a decision about how the application is to be examined...'. It follows from this that the ExA's procedural decisions cannot regulate the conduct of the Applicant, IPs or OPs once the Examination is complete and closed. The ExA may recommend that the Applicant take such a course of action and that IPs and OPs assist in its delivery but that is as far as it can go within its powers and, once the Examination is closed, it cannot advise on, review, question or even see any related documents.</p> <p>The MCA has maintained in its D6 submission that if such a simulation is done, it should feed into a Navigation Risk Assessment and should not simply be a validation exercise applied <i>ex post facto</i> to a Navigation Risk Assessment that has already been completed.</p> <p>To help the ExA form a view whether this is indeed a matter for a recommendation to the Applicant, IPs and OPs before closure of the Examination, would the IPs and OPs please provide their views "in the round"</p>

R17Qs	Question to:	Question:
		<p>about the potential practical benefits and value of such a pilotage study to the SoS' decision, if it were to be undertaken voluntarily by the Applicant, commenting particularly on the following considerations:</p> <ul style="list-style-type: none"> a) the potential of a simulation study to provide further valuable information for the SoS on the overall impact of the proposed development to pilot transfer operations, to general navigation in the relevant sea area and to economic sustainability of the operation of the ports of London and Sheerness; and b) participation, configuration and other details of a simulation, with reference to the scope and detail set out in the Applicant's D6 Appendix 38; and c) the need for a further simulation to be followed by further consultation with IPs on Hazard scoring and further addendum or revision to the NRA; and d) the likely timeline for carrying out, documenting and delivering consultation on responses to the simulation results and consequent amendments to the application, if any, to the Secretary of State in time for appropriate consideration before the due decision date.
4.12.2.	The Applicant	<p>Reference Citation in the D5 NRAA Para 145 of the NRAA submitted at D5 [REP5-039] states: "Cost benefit is an optional step of FSA process and is aimed at determining risk controls to justify As Low As Reasonable Practical (ALARP) judgements. No steps were taken in relation to this step for the Addendum NRA. However, the assessment of cost benefit in the original NRA remains valid."</p>

R17Qs Question to:		Question:
		<ul style="list-style-type: none"> Can the Applicant please provide a full citation for the reference to the original NRA in the examination document set (document(s), page(s) and paragraph(s)).
4.12.3.	<p>The Applicant, Marine Management Organisation, Port of London Authority / Estuary Services Ltd, London Pilots Council, Port of Tilbury London Ltd, London Gateway Port Ltd, Port of Sheerness Ltd, Maritime and Coastguard Agency, Trinity House Lighthouse Service and any other IPs / OPs with an interest in these matters</p>	<p>D6 Appendix 22 Annex C: Supplementary Note to ExAQ3.12.34 In para 31 of D6 Appendix 22 Annex C the Applicant states: "[w]ith regards to the consequence assessment, then it is not possible to identify whether any consequence scores are close to a category threshold as theses [sic] scores are generated based on discussions with IPS at the hazard work shop, based on a review of available data."</p> <p>a) Would the Applicant please help the ExA to understand why it is not possible for the Applicant's expert to identify examples in the top 4 NRAA hazard scores where the consequence assessments are close to the threshold between categories (e.g C2 to C3) and in addition please provide clarification of where the consequence scores for the Hazards 5-14 (scored by the Applicant's expert) lie close to that threshold C2 to C3.</p> <p>b) If close to category threshold assessments cannot be made, what implications (if any) does this have for the sensitivity and confidence level that might be ascribed to categorisations?</p>
4.12.4.	<p>The Applicant, Port of London Authority / Estuary Services Ltd, London Pilots Council, Maritime and Coastguard Agency, Trinity House Lighthouse Service</p>	<p>Possible commercial agreement with Pilot Services In D6 Appendix 22 item 3.12.7 the Applicant states in relation to pilot services effects: "[s]hould appropriate relocation incur additional cost the Applicant would be willing to arrange a commercial agreement or other security to the extent that it covers the additional steaming time. Whilst the Applicant has not</p>

R17Qs	Question to:	Question:
		<p><i>been able to discuss such an arrangement with the IPs, it would be reasonable to assume an evidence-based displacement payment would be most suitable, taking into account the historic use of the diamond through pilot records to set appropriate benchmarks and agreeing a per-transfer cost for transfers to a relocated diamond that were demonstrated through data provided by the IPs. This could be secured through a condition requiring approval from the SoS for the approach to determining the displacement payment and the quantum."</i></p> <p>This matter is not currently secured, either through the DCO or another means. To the extent that appropriate relocation might become a necessary precondition of the construction and/or operation and/or decommissioning of the TEOWF, should this be secured and if so, how?</p>
4.12.5.	Marine Management Organisation, The Applicant, Port of London Authority / Estuary Services Ltd, London Pilots Council, Port of Tilbury London Ltd, London Gateway Port Ltd, Port of Sheerness Ltd, Maritime and Coastguard Agency, Trinity House Lighthouse Service	<p>Ports, Shipping and Navigation Policy Context: UK Marine Policy Statement</p> <p>Please identify any policy from the UK Marine Policy Statement² that you consider to be relevant to a decision by the SoS on the application. The Applicant is asked to respond to identified policies at Deadline 8.</p>
4.12.6.	Marine Management Organisation, The Applicant,	<p>Ports, Shipping and Navigation Policy Context: South East Inshore Marine Plan</p>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69322/pb3654-marine-policy-statement-110316.pdf

R17Qs	Question to:	Question:
		<p>The ExA note that a consultation draft South East Inshore Marine Plan was originally programmed for release by April 2019³. If a draft plan will be published before the end of the Examination, the MMO is requested to alert the ExA and the Applicant to it and to submit it to the Examination.</p>
4.12.7.	<p>The Applicant, Port of London Authority / Estuary Services Ltd, London Pilots Council, Port of Tilbury London Ltd, London Gateway Port Ltd, Port of Sheerness Ltd, Maritime and Coastguard Agency, Trinity House Lighthouse Service</p>	<p>Responses to Applicant's new evidence and concluding remarks at D6</p> <p>The Applicant has submitted a new body of evidence relevant to shipping and navigation at Deadline 6. Please review this evidence and provide all concluding remarks in relation to it at Deadline 7. The Applicant may make closing submissions on responses to this question at Deadline 8.</p> <p>In responding to this request and without excluding a general capacity to comment on other matters, IPs and OPs are asked to provide observations on whether the following have addressed previously expressed concerns:</p> <ul style="list-style-type: none"> a) Appendix 22 responds to ExA questions on hazard scoring by HAZMAN2 software, provides additional information on expert credentials and Marico QA/QM procedures. b) Appendix 26 Annex C provides Applicant analysis of commercial impact to pilot services. It is not evident that IPs / OPs have been consulted. c) Appendix 38 sets out the specification and potential providers for a Simulation Study. d) Appendix 41 provides new animations of selected vessel tracks with commentary by the Applicant's experts.

³ <https://www.gov.uk/government/publications/statement-of-public-participation-north-east-north-west-south-east-and-south-west/south-east-marine-plan-proposed-engagement-timetable>

R17Qs	Question to:	Question:
		e) Appendix 42 provides new Collision Risk Modelling (CRM) post SEZ by a new consultancy. How does this compare with the Collision Risk Modelling within the Application produced by Marico? In this last respect, the Applicant is asked to provide a tabulated comparison between the Marico CRM and the new CRM.
4.13.	Noise and other Public Health Effects	
	There are no noise and other public health effects questions in this question set.	
4.14.	Other Strategic Projects and Proposals	
	There are no questions in this question set relating to other strategic projects and proposals.	
4.15.	Socio-economic Effects	
	There are no questions in this question set relating to socio-economic effects.	
4.16.	Townscape, Landscape, Seascape and Visual	
	There are townscape, landscape, seascape and visual questions in this question set.	
4.17.	Transportation and Traffic	
	There are no transportation and traffic questions in this question set.	
4.18.	Water Environment	
	There are no water environment questions in this question set.	

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