



APPLICATION BY VATTENFALL WIND POWER LIMITED FOR A DCO FOR THE THANET EXTENSION OFFSHORE WIND FARM

RESPONSE TO FINAL WRITTEN QUESTIONS AND REQUESTS FOR INFORMATION UNDER RULE 17

OF

PORT OF TILBURY LONDON LIMITED AND LONDON GATEWAY PORT LIMITED

DEADLINE 6A (3 JUNE 2019)

1. SUMMARY

1.1 This document sets out the response of Port of Tilbury London Limited (PoTLL) and London Gateway Port Limited (LGPL) (together, the Ports) to the Examining Authority's (ExA's) final written questions and requests for information under Rule 17 of the National Infrastructure (Examination Procedure) Rules 2010.

2. RESPONSE

2.1 Table 1 below sets out a response to the questions directed to the Ports.

2.2 Table 1:

ExQ3	Question to	Question	Response
Navigation: Maritime and Air			
4.12.1	Marine Management Organisation, The Applicant, Port of London Authority / Estuary Services Ltd, London Pilots Council, Port of Tilbury London	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.	Before responding to the ExA's questions, the Ports would like to comment that they agree with the ExA's conclusion that it would not have the power to make a procedural decision that has any effect beyond the end of the Examination. But given the nature of the Examination and the closure that the end of the Examination represents, the Ports also question whether the ExA would be able even to recommend that the Applicant undertakes such a simulation voluntarily



ExQ3	Question to	Question	Response
	<p>Ltd, London Gateway Port Ltd, Port of Sheerness Ltd, Maritime and Coastguard Agency, Trinity House Lighthouse Service</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. There is a possible mechanism for the Applicant to submit such additional evidence directly to the SoS during the decision-making period. 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. The Applicant also suggests that</p>	<p>and 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>As the ExA says, once the Examination is closed it cannot advise on, review, question or even see any related documents. For the same reason it is not appropriate for the ExA to seek to influence what might happen after the end of the Examination, which such a recommendation would undoubtedly do.</p> <p>The ExA must report on the application, and make its recommendations to the Secretary of State, based on the evidence and submissions before the ExA. If, in the light of those recommendations, the Secretary of State considers that more information is needed during the decision period then, in the normal way that further information can be requested of the Applicant and of IPs and OPs. That could include a request that a further simulation study is carried out.</p> <p>In the meantime there is nothing to prevent the Applicant from undertaking such a study in the anticipation that it might be requested by the Secretary of State but we consider that it would be wrong for the ExA to make any recommendation about that.</p> <p>(a) As set out in the previous representations of the Ports (including within the HR Wallingford Report [Appendix 1 to REP4C-016]), it is considered that the study should be repeated for the reasons previously given.</p> <p>The Ports consider that such a further pilotage simulation study would certainly be <i>"of great value for the Secretary of State in evaluating the overall impact of the proposed development"</i>. Without such a further study, the Ports contend that it will not be possible for the Secretary of State to make a reasoned assessment of the navigation risks and economic impacts of the project.</p>



ExQ3	Question to	Question	Response
		<p>"...should the Examining Authority be of the view that a pilotage simulation could still be necessary to inform the SoS' 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." 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</p>	<p>As set out in the Ports' Deadline 4C Reps [REP4C-016]: <i>"whilst the NRAA gives more comfort than the NRA with regard to the transit of ships via the inshore route, LGPL and POTLL remain unconvinced by the NRAA with regard to pilot boarding operations. In this regard a full bridge simulation study is considered necessary"</i>.</p> <p>Given that the absence of the further simulation study means, in the Ports' opinion, that the impacts of the project cannot be examined fully by the ExA, it will not be in a position to assess the effects of the application in accordance with what the National Policy Statement EN-3 requires. Without further information, the Secretary of State will therefore be unable to determine the application based on a full environmental impact assessment and will not be able to make an Order granting development consent which is in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. As such, the Ports consider that not only would a further simulation study be of great use for the Secretary of State but it would also be beneficial for the Applicant as it would afford it the opportunity to demonstrate to the Secretary of State that the environmental impacts of the application had been fully considered.</p> <p>(b) The Ports have undertaken an initial review of the Applicant's 'Appendix 38 document' which became available on 30 May 2019, albeit there has been insufficient time since the document first became available to discuss its content with the Ports' respective harbour masters and technical advisers in time to meet Deadline 6A.</p> <p>The provision of the 'Appendix 38 document' (the Document) by the Applicant is welcomed and is a helpful step in reaching agreement with IPs regarding the scope of any future Pilot Bridge Simulation Study (PTBS). The Ports contend that such a PTBS is a critical tool offering the benefit of:</p>



ExQ3	Question to	Question	Response
		<p>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" 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> <p>a) the potential of a simulation study to provide further valuable information for the SoS on the overall impact of the proposed development</p>	<p>(i) allowing the acceptability of the available sea room for pilotage acts and vessel transits, occurring concurrently in the same area of sea, to be assessed; and</p> <p>(ii) informing the assessment of scoring of risks in a Navigation Risk Assessment (NRA) (or verifying, or otherwise, the scoring of risks in an existing NRA).</p> <p>Whilst the Ports defer largely to the parties responsible for maritime safety and for undertaking pilotage acts to comment on the details and scope of assessment put forward in the Document, the Ports offer the following comments:</p> <ul style="list-style-type: none"> • The Ports do not agree that the PTBS should be "<i>focused on pilotage, rather than passage/transit</i>" (Para. 10) and contend that it should consider the interaction/coexistence of both activities in the same area of sea such that the influence of vessel transits on pilotage acts and vice versa are considered. This approach will allow a full picture of the impacts of the proposed offshore wind farm extension to be considered. • The Ports are of the view that MARIN is the preferred simulator provider based on the discussion of the various providers set out in Section 3 of the Document. HR Wallingford may provide a suitable alternative (noting the declaration of interest which has been made by Vincent Crocket of HR Wallingford who has represented the Ports during the course of this Examination). • Whilst the input of the Applicant and IPs will be necessary to an extent, ultimately the management of the simulations and reporting should be as independent as possible. • The timescales set out in Table 3 of the Document appear reasonable. The Ports agree with the Applicant that "<i>it would not be prudent for time constraints to affect the quality of any study findings</i>". • Consideration of vessels up to 333m LOA is welcomed, however the Ports



ExQ3	Question to	Question	Response
		<p>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</p> <p>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</p> <p>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</p> <p>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.</p>	<p>contend that vessels of 366m and 400m should also be included to consider possible future use of the inshore route/NE Spit by such vessels. This is consistent with the position put forward by Vince Crockett of HR Wallingford (on behalf of the Ports) at the workshop held on 27 February 2019.</p> <ul style="list-style-type: none"> The Ports contend that simulation exercises should also consider unanticipated circumstances such as a loss of engine power (the Ports note that to some degree this is covered off by Fail Criteria 6 in Annex B of the Document). The Ports welcome and agree with the proposal at para. 41 of the Document for an independent observer to be provided by the MCA. <p>(c) The Ports consider that the results of the simulation study will necessarily need to feed in to the Applicant's revised NRAA in order to assess the results of the study. Engagement with Shipping and Navigation IPs and OPs, including the Ports, in this regard will be welcomed.</p> <p>(d) No comment, except to note re mention of 'the due decision date' that the Secretary of State is of course able to extend the deadline for determination of the application.</p>
4.12.3	The Applicant, Marine Management Organisation, Port of London Authority / Estuary Services Ltd,	<p>D6 Appendix 22 Annex C: Supplementary Note to ExAQ3.12.34</p> <p>In para 31 of D6 Appendix 22 Annex C the Applicant states: “[w]ith regards</p>	<p>(a) For the Applicant.</p> <p>(b) The Ports will comment further on this point at Deadline 7 however at this stage they note that it is odd that if consequence scores were based on discussions with IPs, that ultimately such scores did not accurately reflect the</p>



ExQ3	Question to	Question	Response
	<p>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><i>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."</i></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>	<p>opinions of IPs. The Ports set out a response in respect of the Applicant's characterisation of the Hazard workshop and concerns in respect of consequence scoring on page 10 of their Deadline 6 Representations [REP6-105]. Given that concerns regarding consequence scores were raised following the workshop, they could not have been generated based solely on discussions with IPs at such workshop.</p>
4.12.5	Marine Management Organisation, The	Ports, Shipping and Navigation Policy Context: UK Marine Policy	The Ports submitted a full response in respect of policy at Deadline 3 in their Representations [REP3-070] which included a Planning Policy Position Paper.



ExQ3	Question to	Question	Response
	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	Statement Please identify any policy from the UK Marine Policy Statement 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.	This paper discussed relevant marine policy at section 6 and identified several relevant UK Marine Policy Statement policies.
4.12.7	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	Responses to Applicant's new evidence and concluding remarks at D6 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. 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:	The Ports will respond at Deadline 7.



ExQ3	Question to	Question	Response
		<p>a) Appendix 22 responds to ExA questions on hazard scoring by HAZMAN2 software, provides additional information on expert credentials and Marico QA/QM procedures.</p> <p>b) Appendix 26 Annex C provides Applicant analysis of commercial impact to pilot services. It is not evident that IPs / OPs have been consulted.</p> <p>c) Appendix 38 sets out the specification and potential providers for a Simulation Study.</p> <p>d) Appendix 41 provides new animations of selected vessel tracks with commentary by the Applicant's experts.</p>	