



TRINITY HOUSE

3 June 2019

The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Your Ref: EN010084
Identification No. 20012441

The Thanet Extension Offshore Wind Farm Project Written Response to the Examining Authority for Deadline 6A

Dear Sir / Madam

We refer to the above application for development consent.

This letter sets out TH's further response at Deadline 6A to enquiries from the Examining Authority (ExA) in respect of the ExA's final written questions / request for information under Rule 17 (R17Qs) issued on 30 May 2019.

In this letter TH also submits a response to the ExA in respect of the *Applicant's* Deadline 6 submission to the ExA regarding the Applicant's response to the ExA's Third Written Questions (EXQ3). Question 3.12.23 refers as detailed further below.

- **Examining Authority's Final Written Questions (R17Qs)**

4.12 Navigation, Maritime and Air

Question 4.12.1 - 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.

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 "...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 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.

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 *ex post facto* to a Navigation Risk Assessment that has already been completed.

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:

- 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.

TH Response:

As stated at ISH8, TH are of the opinion that if a new pilotage simulation were to be held we would still have concerns over the personnel used and scenarios tested.

We have always stated that the outcome from an incident in the area of the proposed development could have severe consequences, and within a simulation study it would still be possible to miss this one scenario.

Question 4.12.3 - D6 Appendix 22 Annex C: Supplementary Note to ExAQ3.12.34

In para 31 of D6 Appendix 22 Annex C the Applicant states: *“with regards to the consequence assessment, then it is not possible to identify whether any consequence scores are close to a category threshold as these [sic] scores are generated based on discussions with IPS at the hazard work shop, based on a review of available data.”*

- 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.
- 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?

TH Response:

TH recognise that within any Risk Assessment process there will be scores which are close to the thresholds for higher categories of risk. As was identified by the ExA at ISH8 it would only require a very small change in circumstances to alter the perceived risk.

It is our opinion that perceived risks and their score should be identifiable, and recorded, no matter how close to the threshold they are.

Question 4.12.4 - Possible commercial agreement with Pilot Services

In D6 Appendix 22 item 3.12.7 the Applicant states in relation to pilot services effects: *“should 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 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.”*

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?

TH Response:

TH reiterate its comments at earlier stages where we consider any mitigation measures identified and relying on other parties must be secured within the DCO/DML.

Question 4.12.5 - Ports, Shipping and Navigation Policy Context: UK Marine Policy Statement

Please identify any policy from the UK Marine Policy Statement¹ 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.

TH Response:

TH has no comment.

Question 4.12.7 – 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:

- 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.
- 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

¹

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

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.

TH Response:

TH has no further comment to previous submissions.

TH Response to Appendix 22 to Deadline 6 Submission: Applicant's Responses to the Examining Authority's Third Written Questions – EXQ3" Doc EN010084-001952

Question 3.12.23 (ExQ3)

Applicant's Response to the ExA:

2. Introduction of legislation such as the UK Port Marine Safety Code in 2003 mandating the need for improved management of navigation safety in ports and their approaches, following the grounding due to pilotage error on the *Sea Empress* in the approaches to Milford Haven.

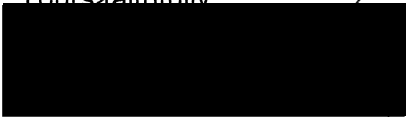
TH Response:

TH wish to highlight that the Port Marine Safety Code is not legislation and as such does not mandate compliance. Compliance with the code is voluntary and non-enforceable.

TH understands that the MCA only audit 8 establishments a year, with 261 of 450 Statutory Harbours Authorities reporting compliance.

Please address all correspondence regarding this matter to myself at russell.dunham@thls.org and to Mr Steve Vanstone at navigation.directorate@thls.org

Yours faithfully


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Legal & Risk Advisor

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