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Your Ref:

Our Ref: EN010115

Date: 23 July 2024

Dear Sir / Madam

Planning Act 2008 – Section 89(3)

Application by Five Estuaries Offshore Wind Farm Limited for an order granting development consent for the Five Estuaries Offshore Wind Farm project (EN010115)

Procedural Decisions made by the Examining Authority (ExA) following the submission of Relevant Representations by Interested Parties

Following the Application's acceptance for Examination on 22 April 2024 [[PD-003](#)] the Examining Authority (ExA) has decided to make a number of Procedural Decisions requesting additional information, seeking clarification and/ or corrections. The following Procedural Decisions have been made under Section 89(3) of the Planning Act 2008 (PA2008) with the purpose of utilising pre-Examination time and to obtain additional information or clarifications as early as possible. This is to assist the Examination which will be commencing in due course. This set of Procedural Decisions, amongst other things, relate to:

- Documents submitted following the Application's submission and acceptance
- The preparation and submission of Statements of Common Ground (SoCGs)
- The preparation and submission of Local Impact Reports (LIR) by Local Planning Authorities
- Clarification from Natural England concerning its Relevant Representation [RR-081]
- The undertaking of further species surveys by the Applicant
- The submission of a Land Rights Tracker by the Applicant

It should be noted that in making the Procedural Decisions relating to the submission of the SoCGs and the LIRs the ExA has provided indications for the parties involved in their preparation of when those documents should be submitted as Examination documents.

1) Documents submitted following the Application's submission and acceptance

Applicant's documents

Further to the issuing of section 51 advice as part of the Application's acceptance, the Applicant submitted the following documents on 26 April 2024:

- [\[AS-001\]](#) – covering letter
- [\[AS-002\]](#) – Guide to the Application, superseding [APP-003]
- [\[AS-003\]](#) – Habitats Regulations Assessment Derogation Case, superseding [APP-046]
- [\[AS-004\]](#) – Onshore project description, superseding [APP-083]
- [\[AS-005\]](#) – Human health and major disasters, superseding [APP-095]
- [\[AS-006\]](#) – Outline Landscape and Ecological Management Plan, superseding [APP-254]

The above listed documents address omissions and/ or other drafting errors raised in the aforementioned section 51 advice. Given those documents address deficiencies in the originally submitted versions the ExA has made the procedural decision to accept additional submissions [AS-001] to [AS-006] (inclusive).

The Port of Tilbury London Limited (Port of Tilbury)

The Port of Tilbury in submitting its Relevant Representation (RR) [\[RR-091\]](#) on 21 June 2024 sought to email a longer written submission to the Planning Inspectorate via the project email address for this Application. However, the Port of Tilbury used an incorrect email address and the non-receipt of its full RR did not become apparent until the publication of all of the submitted RRs on 2 July 2024. On 2 July the Port of Tilbury resubmitted its full RR using the correct email address. The Port of Tilbury registered itself as an Interested Party (IP) in time (i.e. before 23:59 on 21 June 2024). The ExA is content that the Port of Tilbury had sought to submit its full RR in time and that its non-receipt was due to administrative error made by this IP. The ExA has therefore made the Procedural Decision to accept as an Additional Submission [AS-007] the document submitted by the Port of Tilbury on 2 July 2024.

Ministry of Defence (MoD)

On 12 July 2024 the MoD copied the Planning Inspectorate into an email exchange (including a letter dated 12 July 2024) involving the Applicant. That email exchange having been initiated by the Applicant in the absence of the MoD submitting a RR. The MoD's letter raises matters that may need to be examined during the Examination notwithstanding the MoD has not registered itself as an IP. Accordingly, the ExA has made the Procedural Decision to accept the email exchange (including the appended letter) between the MoD and the Applicant as an Additional Submission [AS-008]. All of the above mentioned documents can be found in the Examination Library.

2) The preparation and submission of SoCGs

The ExA notes the Applicant has advised in [\[APP-266\]](#) that it intends to enter into SoCGs with a number of Interested Parties (IPs). Having regard to that intention and the RRs that have been submitted by the IPs, the ExA has made a Procedural Decision that the

Applicant and the IPs listed below **MUST** prepare SoCGs to be submitted in their **final and signed** forms at or before a deadline date that will be identified in the Examination timetable during the Examination. The ExA has further decided that in the light of the MoD's letter of 12 July 2024 to the Applicant that those parties should also enter into a SoCG.

The Applicant and the parties who will be entering into SoCGs should note well that the ExA will be expecting the **final and signed** versions of the SoCGs to be submitted as Examination documents **without fail no later than around the MIDPOINT for the Examination** (the midpoint). The midpoint's date will be determined following the holding of the Preliminary Meeting and the ExA's confirmation of the Examination timetable. The ExA wishes to receive the final and signed SoCGs at the midpoint so that there is clarity about what is or is not agreed between the Applicant and the IPs while there would still be sufficient Examination time remaining for the ExA to further examine any remaining areas of disagreement. For example, were there to be a methodological disagreement about how data should be modelled then there would be sufficient time available for the ExA to direct that an alternative methodology favoured by a party be used (on a without prejudice basis) to analyse the relevant data.

In requiring SoCGs to be submitted by no later than the midpoint the ExA wishes to make clear that once a SoCG has been concluded and submitted the parties should nevertheless continue to engage with one another for the remainder of the Examination. The purpose of that continuing engagement being to reduce, where possible, any remaining areas of disagreement, including, for example, resolving: methodological differences; the type and the means for securing any necessary mitigation; and the detailed drafting for any necessary protective provisions.

The ExA will not generally be requesting IPs to identify and submit Principal Areas of Difference (PADs). Instead, the ExA wishes the Applicant and other IPs in drawing up their bilateral SoCGs to: 1) briefly summarise matters for which there may be agreement; and 2) identify and explain any areas of disagreement.

The ExA notes that Natural England in submitting its RR [\[RR-081\]](#) has taken the opportunity to incorporate its Written Representations (WRs) with its RR and identify PADs. Accordingly, the ExA will not be requiring the Applicant and Natural England to enter into a bilateral SoCG and the ExA has made a separate Procedural Decision below relating to the PADs that Natural England has identified.

With respect to the SoCGs that the ExA has decided should be submitted, the Applicant and the relevant IPs **MUST** immediately enter into discussions to scope the matters that are to be covered in their SoCGs. The Applicant, having entered into a dialogue with all of the IPs listed below, must issue a pre-Examination SoCGs position statement not later than **13 August 2024**. That position statement must summarise for each SoCG:

- the scope of the matters to be covered, including and land rights issues;
- for each matter, whether there is agreement or disagreement and outline the reasons for any agreement or disagreements; and
- for any matters subject to disagreement, whether that position is likely to change by the close of the Examination and what might be required for agreement to be reached.

For some matters which multiple IPs have an interest in, for example effects on: shipping and navigation; marine ecology (or elements thereof); and the operation of the public highway, there may be scope for those matters to be addressed thematically, with the Applicant and two or more IPs entering into topic specific SoCGs. The ExA would be supportive of such an approach being taken, particularly if that would assist the expeditious preparation of the SoCGs. Although Natural England and the Applicant are not being required to enter into a bilateral SoCG, should Natural England wish to enter into a multi-party thematic SoCG, then the ExA would have no objection to that. The Applicant and the following must enter into bilateral or multi-party SoCGs:

- Affinity Water Limited
- Anglian Water
- Cadent Gas
- Corporation of Trinity House of Deptford Strond
- East of England Ambulance Service NHS Trust
- East Suffolk Council
- Environment Agency
- Essex County Council
- Essex County Fire and Rescue
- Essex Police
- Essex Wildlife Trust
- German Federal Maritime and Hydrographic Agency
- Harwich Haven Authority
- Historic England
- London Gateway Port Limited
- Marine Management Organisation
- Maritime and Coastguard Agency
- Ministry of Defence
- National Federation of Fishermen's Organisations
- National Grid Electricity Transmission PLC
- National Highways
- National Trust
- Network Rail
- Port of Felixstowe
- Port of London Authority
- Royal Society for the Protection of Birds
- Suffolk County Council
- Suffolk and Essex Coast and Heaths National Landscape Partnership
- Tendring District Council
- United Kingdom Chamber of Shipping

The ExA requests that as the MoD is not an IP, the Applicant initiates contact with the MoD for the preparation of a SOCG and also notifies the MoD of this Procedural Decision.

3) Natural England PADs

In the light of Natural England early identification of PADs as part of its RR [RR-081] the ExA has made the Procedural Decision that Natural England's PADs should be treated as being a 'live' document to be updated during the Examination indicating what progress, if any, has been made to address areas of disagreement. While Examination timetabling will be finalised following the holding of the Preliminary Meeting, Natural England should work on the basis that it will be expected to submit its first substantive PADs update at around the Examination's midpoint. Thereafter Natural England should work on the basis that it will need to submit a PADs update at each subsequent Examination deadline.

4) Clarification from Natural England concerning its Relevant Representation [RR-081]

Within Natural England's RR [RR-081], most particularly the PADs summary and Appendices there are missing issue identification numbers and paragraph numbers. To assist the use and interpretation of this RR the ExA has made the Procedural Decision that Natural England should resubmit its RR, to enable the missing issue identification numbers and paragraph numbers to be incorporated. This revised version of the RR should be submitted not later than **13 August 2024**.

5) Undertaking of further species surveys by the Applicant

Natural England in its RR [RR-081] has raised concerns about the limitations of species survey results contained within the Application documentation. Natural England has therefore advised further surveys should be undertaken at the optimum time for undertaking such surveys (see references J1 to J7 in Appendix J of the RR). In line with Natural England's advice the ExA has made the Procedural Decision that the Applicant **must** undertake the further species surveys identified by Natural England in its RR. Given the seasonal limitations for undertaking species surveys the Applicant should arrange for the necessary surveys to be undertaken as soon as possible and should thereafter arrange for the survey results and the interpretation of that data to be submitted as Examination documentation at the earliest opportunity. Accordingly, the Applicant **must** submit a survey timetable and reporting schedule no later than **6 August 2024**. The Applicant should liaise with Natural England, as necessary, to ensure that the required additional survey effort addresses the concerns that have been identified by Natural England.

6) The preparation and submission of Local Impact Reports (LIRs) by Local Planning Authorities

The Examination Timetable will be confirmed by the ExA following the holding of the Preliminary Meeting. However, in the meantime the Local Planning Authorities who will be submitting LIRs should work on the basis that those reports will be for submission no later than two months into the Examination period.

In connection with the submission of the LIRs the Examining Authority has made the Procedural Decision that each LIR **must** have appended to it copies of all of the relevant adopted Development Plan policies along with the explanatory/supporting text for those policies. Any Local Planning Authority that fails to comply with this Procedural Decision will be requested by the ExA to resubmit its LIR with the missing policies added.

7) Land Rights Tracker

The ExA is mindful of the Applicant's submission of a Schedule of Negotiations [[APP-027](#)] and a Statutory Undertakers Position Statement [[APP-028](#)]. Having regard to the contents of those documents and the comments relating to Land Rights issues included in the submitted RRs the ExA has made the Procedural Decision that the Applicant should submit two Land Rights Trackers, one for Affected Persons (AP(s)) who are not Statutory Undertakers and a second tracker for Statutory Undertakers. Following the submission of the initial trackers they **must** be updated by the Applicant at each subsequent Examination deadline, explaining, amongst other things, what engagement there has been and how negotiations have progressed since the previous versions of the trackers were submitted. APs will have the opportunity to comment on the contents of the Land Rights trackers at the next appropriate Examination deadline.

The trackers should include the information listed below in a tabular form for each land interest which had not already been acquired at the date of the Application's submission. The trackers should be completed on the basis that for so long as there is non-agreement that will amount to an objection by an AP. The trackers should include:

- The Land Plot number used in the Book of Reference (BoR).
- The Land Plan reference used on the Land Plans.
- Description of the land rights sought, including any restrictive covenants.
- Whether the person with an interest in the land is within Category 1 and is an owner, lessee, tenant or occupier.
- Whether that person with an interest in the land is within Category 2 and is a person interested in the land or has the power to sell or convey the land or to release the land.
- Whether the person or organisation with an interest in the land is represented or unrepresented and if represented the name of the company or individual providing representation should be stated.
- The reference number assigned to the Interested Party or Affected Person.
- The Examination Library (EL) reference number assigned to each Relevant Representation.
- The EL reference number assigned to each Written Representation.
- The EL reference number assigned to any other relevant document submitted during the Examination.
- The EL reference number assigned to all of the Applicant's responses to APs' submissions, with specific reference to the paragraph number or section in the response document.
- The likely duration of any temporary rights, such as Temporary Possession.
- An account of all of the negotiations undertaken prior to and following the Application's submission, including the dates for when there has been engagement between the parties, any reasons for why negotiations may not have been progressing and an explanation for any disagreements.

The trackers are likely to contain a lot of information which will need to be presented in a useable form. Accordingly, the ExA has made the Procedural Decision that the Applicant should submit a blank template for the required trackers in its preferred form by 6 August 2024 for review and comment by the ExA. Thereafter the ExA will provide comments about

the blank templates prior to them being fully populated by the Applicant and then being submitted in initial completed forms no later than 28 August 2024.

A number of IPs in submitting their RRs appear to have made representations in their capacity as APs, albeit without expressly identifying which Land Plots, as recorded in the BoR and as shown on the Land Plans, were being referred to. In a number of RRs concerns have been expressed about the adequacy of the negotiation process prior to the Application's submission. Given that background the ExA has made a further Procedural Decision that the first version of the Land Rights Trackers, which are to be submitted no later than 28 August 2024, **MUST** be informed by the Applicant liaising directly with every IP that made a land interest submission in their respective RRs. In liaising with those IPs, the Applicant must establish precisely which Land Plots were being referred to by the IPs in their RRs. That land rights information must be incorporated into the first versions of the Land Rights Trackers and the subsequently updated versions of the trackers.

8) Revisions to Application documents and other documents

In the event of it being necessary for a) the Applicant to submit amended Application documents, for example the draft Development Consent Order; or b) the Applicant or another IP to submit an amended document, then clean and tracked changed versions of the document should be submitted concurrently so that any revisions can readily be identified by all parties, the Secretary of State and the ExA.

The Applicant and other IPs should note that the ExA expects in the near future to issue some draft written questions, for consideration, prior to the commencement of the Examination. Once the Examination has commenced the Applicant and other IPs will be given the opportunity to submit written replies to those questions at a deadline to be identified in the finalised version of the Examination timetable.

Yours faithfully

Grahame Gould

Grahame Gould
Lead Panel Member for the Examining Authority

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