Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Annex B to Appendix 5 to Deadline 7 Submission: Response on policy matters in relation to shipping and navigation

Relevant Examination Deadline: 8

Submitted by Vattenfall Wind Power Ltd

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The Applicant's final position on Shipping and Navigation policy

Introduction

1. The Applicant has set out its position on policy relating to shipping and navigation in previous submissions including those at Deadline 3 (Appendices 3 and 11) and Deadline 4 (Appendix 5). Its submissions are summarised below.

NPS EN-3

General

2. NPS EN-1 and NPS EN-3 are national policy statements which have effect for the purposes of section 104(2)(a) of the Planning Act 2008.

3. EN-3 recognises (at paragraph 1.3.1) that EN-1 covers "the need and urgency for new energy infrastructure to be consented and built with the objective of contributing to a secure, diverse and affordable energy supply and supporting the Government's policies on sustainable development, in particular by mitigating and adapting to climate change" [emphasis added].

4. EN-3 provides more specific guidance applicable to renewable energy projects such as TEOW. At paragraph 2.6.1 it advises that "offshore wind farms are expected to make up a significant proportion of the UK's renewable energy generating capacity up to 2020 and towards 2050". The project is clearly consistent with these objectives.

Paragraph 2.6.161

5. Policy on decision-making in relation to navigation and shipping impacts advises at paragraphs 2.6.61 advises as follows: "The IPC should not grant development consent in relation to the construction or extension of an offshore wind farm if it considers that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the development. The use of recognised sea lanes essential to international navigation means: (a) anything that constitutes the use of such a sea lane for the purposes of article 60(7) of the United Nations Convention on the Law of the Sea 1982; or (b) any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone (REZ)".

6. The Applicant does not consider that this paragraph applies to the consideration of this project.

7. The guidance reflects provisions contained within section 99 of the Energy Act 2004, which added section 36B to the Electricity Act 1989. Section 36B set out duties imposed on the MMO in relation to navigation when granting a consent under the 1989 Act. Section 36(1B) provides that the MMO (see section 36B(1A)) may not grant such a consent if it considers that interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the carrying on of offshore generating activities (section 36B(1)(a)). The definition of the "use of recognised sea lanes essential to international navigation" in the legislation reflects the definition used in paragraph 2.6.61 of EN-3.

8. Article 60(7) of the United Nations Convention on the Law of the Sea 1982 ("UNCLOS") is part of a wider provision dealing with "Artificial islands, installations and structures in the exclusive economic zone", as well as safety zones. Article 60(1) provides as follows:

> "1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of: (a) artificial islands; (b) installations and structures for the purposes provided for in article 56 and other economic purposes; (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.
>
> 2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures…
>
> 4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures".

9. Article 60(7) then provides that:

> "Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognised sea lanes essential to international navigation".

10. The term "recognised sea lanes essential to international navigation" is not defined in UNCLOS. The term "sea lane" is however adopted elsewhere. In Part II "Territorial Sea and Contiguous Zone", Article 22 "Sea lanes and traffic separation schemes in the territorial sea" provides that:

> "1. The coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships…

3. In the designation of sea lanes and the prescription of traffic separation schemes under this article, the coastal State shall take into account: (a) the recommendations of the competent international organization; (b) any channels customarily used for international navigation; (c) the special characteristics of particular ships and channels; and (d) the density of traffic.

4. The coastal State shall clearly indicate such sea lanes and traffic separation schemes on charts to which due publicity shall be given".[1]

11. Separate provision is therefore made in respect of sea lanes, outside Article 60(7), which does not provide a direct definition of "sea lanes essential to international navigation". However, in circumstances where sea lanes must be designated and publicised if established in territorial waters,[2] it is reasonable to assume that sea lanes essential to international navigation should be "recognised" with some formal procedure to this end. Indeed EN-3 paragraph 2.6.155 advises that "information on internationally recognised sea lanes is publicly available".

12. There appears to be no dispute that the IMO is "the competent international organisation" in matters of navigation under UNCLOS. The Applicant also considers it reasonable to assume that if a sea lane essential to international navigation is to be "recognised," it should be recognised as such by the IMO; and that this should be achieved by some formal publicised means, including through entries on navigational charts.

13. There is no suggestion by any party that the routes to the north and west of the proposed TEOW in particular, as assessed in the NRA, are designated or charted as any form of sea lane. No party has suggested that information on internationally recognised sea lanes is publicly available in respect of any route which is claimed to be affected by the project. There is no evidence that either route has been recognised as essential to international navigation, by any body including the IMO.

14. The Applicant notes the conclusion of the MCA that "we are not aware that this 'channel' is recognised as an International Sea Lane" and that this is on the basis of it not being marked on a nautical chart or elsewhere defined. This confirms that paragraph 2.6.161 does not apply in this case. Any later attempt by the MCA (supported by PoT and LG) to suggest that the inshore route in particular should somehow still be treated as if it were a sea lane falling under paragraph 2.6.161 is therefore misplaced and does not pay due regard to the regulatory framework in

[1] See too eg Article 41 "Sea lanes and traffic separation schemes in straits used for international navigation".
[2] Or eg in straits used for international navigation.

UNCLOS. It is also inconsistent with EN-3 paragraph 2.6.155. It might be possible in the future to designate a sea lane under Article 22, but this has not happened and this would not in any event make it an internationally recognised sea lane under the EN-3 definition. The fact that there are internationally recognised sea lanes elsewhere does not mean that routes near the project should be treated in the same way.

15. On this basis there is no recognised sea lane with which the project would interfere under this aspect of paragraph 2.6.161.

16. Paragraph 2.6.61 also includes within the definition "sea lanes essential to international navigation" the phrase "any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone (REZ)". This element of the definition is unclear, but paragraph (b) still refers back to "paragraph (a)" and, for the reasons given above, the Applicant does not consider that any route considered in the NRA falls within paragraph (a).

Paragraph 2.6.162

17. Turning to paragraph 2.6.162, this states that "The IPC should be satisfied that the site selection has been made with a view to avoiding or minimising disruption or economic loss to the shipping and navigation industries'.

18. The Applicant's approach to site selection is set out in the relevant ES chapter (PINS ref: APP-040) and clearly sets out how regard has been given to minimising the effect on these industries (paragraph 4.6.7), particularly through the pre-application boundary change, following consultation responses at Section 42.

19. An initial area of coverage for the proposed project, as an extension to an existing windfarm, was considered internally, as is evidenced in the Site Selection and Alternatives chapter of the ES (6.1.4/APP-040). This area extended further to the west and slightly to the south as is illustrated in Figure 4.2 of that chapter (see too paragraph 4.6.7). The area to the south was amended to allow for an appropriate alignment and lines of orientation with the existing OWF. The area to the west was reduced, prior to consultation, to minimise interaction with shipping and navigation stakeholders, despite the density plotting indicating an area of relatively low density in ship movements. A further change was then introduced following the formal pre-application consultation phase, specifically to provide further room for marine operations and to avoid or minimise any potential effects on pilotage operations and dipping traffic. This change is recorded at paragraph 4.12.15 of the ES chapter and illustrated at Figure 4.20 which was the final application RLB. Since that stage, the SEZ has also been introduced with the same objective.

20. For reasons explained throughout the Applicant's submissions (see SEZ note (REP4-018) the delineation of the project has followed established guidance which all parties accept to be relevant to assessing an appropriate extent of sea room for shipping vessels. The application of that guidance demonstrates that even taking a highly precautionary approach to vessel sizes navigating to the west and north of the project, there would be adequate sea room for passage. The Applicant considered 4 concurrent passages of the largest vessel to be recorded in the area (333m in length), notwithstanding the very low incidence of vessels of this size and still lower likelihood of concurrent transits). To this can be added an allowance for space to allow further flexibility of movement to allow for areas where there is a greater complexity of movement, including pilotage operations in the vicinity of NE Spit, or for circumstances where further assumed sea space would offer benefits in dealing with limit metocean conditions.

21. There is no dispute that passage could be safely achieved along the inshore route, and the evidence demonstrates that vessels using this route already track further to the west using existing buoys as navigation aids well away from the existing windfarm (as they did even before the existing windfarm was built). There also appears to be no dispute that in terms of vessel passage, there would be adequate room for transit to the north of the application site.

22. In relation to pilotage, the vast majority of transfers currently undertaken could continue in the same locations. In the extreme minority of cases where a transfer has occurred within the proposed turbine array or sufficiently proximal to it, there would be some movement, however sufficient sea room exists to the west of the wind farm to accommodate these changes without materially affecting the overall pilot service.

23. The sea room provided also meets the stated preference of the PLA/ESL of a 2nm plus 1nm buffer in the area where the vast majority of pilotage operations are focussed; and further provides sufficient space at the Elbow buoy to allow the LPC to conclude that the sea room in that location is adequate to allow pilotage operations to continue.

24. The Applicant does not accept that pilotage operations will be affected away from the area centred around the main NE spit pilot diamond, as there will be both adequate sea room for passage as well as an additional buffer area to allow for the very small fraction of pilotage operations to continue away from the focus of the diamond, as at present. Even to the extent that some vessels passing to the north of the windfarm may alter their dipping movements this would not have any adverse effect on their overall transit.

25. The Applicant has prepared animations of current traffic movements, based on the busiest times of vessel movement (REP6-060 to REP6-063), which confirm the view of the Applicant that the routes in the vicinity of the proposed wind farm are not highly trafficked and that the available sea room is not as sensitive to change as IPs, in particular the PLA/ESL, suggest.

26. In any event, as explained in the Shipping Commercial Assessment (Annex C of Appendix 16 to Deadline 6 submission) even if the nature of effects alleged by the IPs were to be considered (contrary to the Applicant's case), any impacts would be absolutely minimal.

27. Therefore, whilst the data provided by the IPs on commercial operations, particularly pilotage, is porous at best, a reasonable worst case analysis of the figures shows that likely commercial impacts, if not avoided, have been minimised by the site selection, as paragraph 2.6.162 seeks. The Applicant does not concede that any of these effects is likely to occur, but even taking the submissions from IPs at face value, the impact of TEOW on wider port operations is highly likely to be immaterial to general commercial traffic.

28. It should be noted that this aspect of the policy states that site selection should be made "with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, lifeline ferries and recreational users of the sea". The NPS does not define what approaches to ports, or such routes are, by reference to independent regulatory definition or otherwise. The area of the inshore route and routes surrounding the project has been described as an area of open sea and there is no demarcation of these areas as a recognised sea lane, nor is there buoyage, VTS or other controls which you would expect to find in the approaches to port further into the Thames Estuary. The PLA has submitted that this area cannot be equated to marked channels such as Fisherman's Gat or the Princes Channel because of the additional control measures in place within their statutory harbour limits. It is areas such as these that should be considered approaches to ports (in this case the Port of London and ports further along the river) and not wider areas of open sea, as with the route around the project.

29. As for site selection relating to "strategic routes essential to regional, national and international trade", again there is no definition of what these routes are. The Applicant has not seen any clear evidence to demonstrate that the inshore or northern routes are strategic in the sense of fulfilling any identified and planned long-term trade objective, or that they are recognised in any clearly identifiable way as being essential, or of fundamental or central importance to, such trade, in a context where there is a variety of routes into Thames Estuary. As with the policy applying in a later

part of this paragraph to "major commercial navigation routes," there is nothing in published evidence to indicate that these routes should be treated as falling within such definitions. There is no relevant designation under Article 22 of UNCLOS. Neither route is shown in literature such as Pilot Books to indicate important routes to be followed when route planning, such as the Dover Straits. The Applicant is not therefore persuaded that the relevant routes should be regarded as strategic routes in this case, but in any event the broader policy relating to site selection has been met, for the reasons set out above. For completeness, it can be added that the project does not affect lifeline ferries and will not have significant effects on recreational users of the sea, as confirmed in the Statement of Common Ground with the Royal Yachting Association (REP3-044).

30. Paragraph 2.6.162 further states "Where a proposed development is likely to affect major commercial navigation routes, for instance by causing appreciably longer transit times, the IPC should give these adverse effects substantial weight in its decision making".

31. There is no definition of "major commercial navigation routes" and the Applicant has seen no substantiated case to confirm that the inshore or northern routes are particularly significant when seen in the context of other routes. As set out above, there is no designation or other published material relied upon by any other party to indicate that these routes should be regarded as relatively significant. It is to be noted that later, when paragraph 2.6.162 contemplates the reorganisation of traffic activity on major commercial routes, it advises that possible alterations to "might require national endorsement and international agreement". There is no evidence in this case that the routes in question are the subject of any national endorsement which might reflect their significance for commercial shipping.

32. The MSP Guidance, which all parties have considered relevant to the assessment of adequate sea room, advises on sea room considerations to be applied to traffic lanes ranging from less than 4000 vessels per year to more than 18000. This would place the use of the inshore route (at a little over 4000 vessels per year) at the lower end of this range, suggesting that the density of vessel traffic used to define sea room for passage inherently provides searoom that would be appropriate for 4 times the volume of baseline traffic. Further, the data indicates that on average c.11 ships a day pass along the inshore route, which can be compared with the Dover Straits, through which 400 vessels a day pass (in an international traffic separation scheme).[3]

[3] https://www.gov.uk/government/publications/dover-strait-crossings-channel-navigation-information-service/dover-strait-crossings-channel-navigation-information-service-cnis

33. Even if the routes in this case are considered to be major commercial shipping routes, the Applicant considers that the project would comply with this aspect of paragraph 2.6.162. It does not consider that there would be any impact on major commercial shipping routes, for reasons set out above. Ships would still have adequate sea room for passage along the inshore route and adequate sea room has been provided in areas with greater complexity of movements, including pilotage operations, and to allow for variations in metocean conditions. There would be no adverse effect on the overall transit of dipping vessel traffic.

34. Further, even if the alleged nature of impacts advanced by the IPs is taken at face value, they could only be described as minimal, for the reasons already summarised above and explained more fully in Annex C of Appendix 16 to the Deadline 6 submission. In so far as paragraph 2.6.162 refers to development being likely to affect major commercial routes, for instance by causing "appreciably longer transit times", it is clear that the project would not cause generalised and wide impact on transit times as contemplated by the policy, such that substantial weight should be accorded so such adverse effects. The inshore route would remain available for vessel transits (as would the northern route) and, even to the degree that some of the largest vessels selected to avoid this area (which the Applicant does not accept), this would be a tiny fraction (less than 1%) of the total traffic, as explained above.

35. No IP has provided a clearly substantiated case to show that shipping routes affecting their operations would have any commercial effect; and the Applicant has noted that the ES for Tilbury 2 did not even seek to mention the TEOW project as part of any consideration of the future economic cumulative effects arising from the Tilbury proposals.

36. For these reasons, the Applicant considers that there would be no generally adverse effect on any commercial route (if the routes in question qualified under paragraph 2.6.162), but even if the diversionary effect on what would likely be a minuscule proportion of vessels on the inshore route were considered (contrary to the Applicant's case), any deviation would not lead to appreciably longer transit times, even for this highly limited nature of impact. Accordingly, the commercial effects would not be significant. No cogent case has been presented by an IPs to substantiate the allegation that any significant commercial impacts would arise.

37. Further, paragraph 2.6.162 acknowledges that "There may, however, be some situations where reorganisation of traffic activity might be both possible and desirable when considered against the benefits of the wind farm proposal". This reference to "reorganisation" suggests that the corresponding adverse impacts contemplated by

paragraph 2.6.162 are intended to mean something more than the worst case impacts considered by the Applicant.

38. But in any event this aspect of policy confirms that effects on shipping routes covered by this policy can be acceptable when balanced against the benefits of the wind farm, although even on a worst case the impacts which are alleged to arise in this case could not be described as going as far as to be require "reorganisation" of traffic. It is also consistent with the recognition in paragraph 2.6.147 that "Offshore wind farms will occupy an area of the sea and therefore it is inevitable that there will be some impact on navigation in and around the area of the site".

39. Even to the extent that a few vessels were diverted from the inshore route (which is not accepted), or there were some change of movements associated with dipping vessel traffic and pilotage operations, the extent of impacts contemplated in Annex C to Appendix 16 to the Deadline 6 submission are not substantial when compared with the benefits held in prospect by the windfarm, in particular its contribution to a diverse energy supply which supports government policies on mitigating and adapting to climate change.

40. Therefore, even if paragraph 2.6.162 were considered to apply to the routes around the TEOW, in particular the inshore route and the route to the north, the scheme would comply with all aspects of this policy.

Paragraph 2.6.163

41. Paragraph 2.6.163 then provides that "Where a proposed offshore wind farm is likely to affect less strategically important shipping routes, a pragmatic approach should be employed by the IPC. For example, vessels usually tend to transit point to point routes between ports (regional, national and international). Many of these routes are important to the shipping and ports industry as is their contribution to the UK economy. In such circumstances the IPC should expect the applicant to minimise negative impacts to as low as reasonably practicable (ALARP)".

42. If paragraphs 2.6.161 and aspects of paragraph 2.6.162 are not engaged as suggested above, the "pragmatic approach" advocated by this paragraph would apply. It refers to "less strategically important routes", which can be compared with the "strategic routes essential to regional, national and international trade". Thus if it were considered that there was some degree of importance to the relevant routes, they would more appropriately considered under this paragraph. And for the same reasons as those set out above, the project would comply with this policy by minimising impacts on routes transited between ports (including international ports).

43. Again, the policy goes on to advise that there may be some situations where reorganisation of traffic activity might be both possible and desirable when considered against the benefits of the wind farm application. This paragraph does not contemplate that any such reorganisation would require formal changes to designations (it refers to discussions with the MCA and the commercial shipping sector), so applies more naturally in circumstances where (contrary to the Applicant's primary case), there is considered to be some degree of impact in this case which would require some vessels to alter their routeing arrangements. Any such alterations are not significant (and nor would any commercial effects be) for reasons explained above.

44. The Applicant therefore considers that paragraph 2.6.163 would be complied with in this case.

Navigational safety

45. As for other paragraphs in this section of EN-3, paragraph 2.6.147 states that "it is Government policy that wind farms should not be consented where they would pose unacceptable risks to navigational safety after mitigation measures have been adopted". Paragraph 2.6.165 advises that "The IPC should not consent applications which pose unacceptable risks to navigational safety after all possible mitigation measures have been considered".

46. These paragraphs should be read in conjunction with paragraph 2.6.156, which states that "Applicants should undertake a Navigational Risk Assessment (NRA) in accordance with relevant Government guidance". Paragraph 2.6.167 also advises that "The MCA will use the NRA as described in paragraph 2.6.156 above when advising the IPC on any mitigation measures proposed", which confirms the central importance of the NRA in assessing navigational safety issues.

47. Applicant has demonstrated through the NRA that the project would not pose any unacceptable risk to navigation safety through its NRA and NRAA. These assessments have been prepared having regard to guidance including MGN543 and its checklist for developers, which advise (section 3(c)) that "Risk assessments should present sufficient information to enable the MCA to adequately understand how the risks associated with the proposed layout have been reduced to ALARP". MGN543 cross-refers to "Methodology for Assessing the Marine Navigational Safety & Emergency Response Risks of Offshore Renewable Energy Installations (OREI)" which at section C4 "Tolerability of Risk" which advises that "Determining whether the predicted level of risk from an OREI development is tolerable or not is in the first instance a matter of

asking the following questions: i) is the risk below any unacceptable limit that has been established? ii) if so, has it also been reduced to as low as reasonably practicable (ALARP)?". In this case question ii is of particular relevance and this is reflected in the preparation of the NRA and NRAA which are directed at establishing whether the project can show how any risks have been reduced to ALARP.

48. The NRA and the NRAA both show that any risks would be tolerable according to a methodology that complies with MGN543, for reasons that are addressed extensively in submissions by the Applicant (see for example REP2-005). The scoring that has been carried out by the Applicant is the product of extensive analysis, updated during the examination to take on board comments by IPs that have not required any substantial change to the NRA conclusions, based on risk scores, which remain well within the ALARP range following the introduction of the SEZ and allowing for reasonable risk controls.

49. Trinity House in their Deadline 6 submission now conclude, albeit with some reservations, the project is acceptable.

50. The only party to attempt any re-scoring, the PLA/ESL, produced their own analysis which, following the methodology employed in the NE Spit NRA as well as the NRA for Tilbury 2, shows the project to lie within the ALARP range adopted in those assessments. The PLA/ESL has not satisfactorily explained why the scoring system employed in their analysis of the project was changed, but even then its scoring did not rule out the achievement of ALARP through the application of risk controls, which the assessment did not proceed to consider.

51. The Applicant therefore maintains that these paragraphs relating to navigational risk have been complied with in this case. No party has presented compelling evidence to undermine the scoring in the NRA and NRAA which has been carried out by the Applicant in direct response to the requirements of EN-3.

<u>Other policy within EN-3</u>

52. Reference has also been made during the examination to EN-3 paragraph 2.6.153, which advises that "Applicants should establish stakeholder engagement with interested parties in the navigation sector early in the development phase of the proposed offshore wind farm and this should continue throughout the life of the development including during the construction, operation and decommissioning phases. Such engagement should be taken to ensure that solutions are sought that allow offshore wind farms and navigation uses of the sea to successfully co-exist".

53. The Applicant has already explained in some detail the extensive consultation with stakeholders that has occurred both before the submission of the application and throughout the examination process (see, for example, REP2-027 and REP7-003).

54. In accordance with paragraph 2.6.154, consultation took place with the MMO, Maritime and Coastguard Agency (MCA), Trinity House, the PLA as the relevant harbour/industry body and the Royal Yachting Association (RYA). The Applicant does not accept the criticism of the PoT and LG that they ought to have been consulted at an earlier stage. Consultation with respect to the Thames Estuary was undertaken with the PLA as Statutory Harbour Authority for the waters up to the PoT harbour limits. PoTLL and LGPL are a considerable distance from the project (circa 40nm) and in terms of vessels entering the Thames Estuary (which is still a significant distance from these ports) the PLA are the appropriate organisation. The Applicant notes that the PoTLL did not consult with Thanet Extension during its DCO application, presumably on the basis that there was not sufficient interaction between the two developments to warrant consultation. Related to this, the NRA for PoTLL states that beyond its own harbour limits it relied upon the PLAs risk assessment which suggests that for its own development, PoTLL was satisfied to rely upon the PLA as the Statutory Harbour Authority from their own limits to the outer Thames Estuary. Nonetheless, the Applicant has actively and positively engaged with both PoTLL and LGPL since they expressed an interest in the application and throughout the examination process. This has included the organisation of an NRA workshop which resulted in amendments to the NRAA, as consulted upon during the examination.

55. The Applicant also does not accept any criticism of engagement with the PLA/ESL. Perhaps the most striking aspect of the evidence on the consultation with PLA/ESL has been their attempt to negate the outcome of the pilot simulation that was carried out as part of that consultation. This was carried out in a PLA simulator, with the agreement of the PLA, according to a methodology in an inception report which was not questioned by the PLA and led to simulation results which were agreed by PLA officers at the simulation to show the feasibility of ongoing pilot operations in a less extensive area of sea room than that which would exist with the SEZ in place. The navigation workshop again presented an opportunity for any perceived issues with the NRA scoring to be addressed and for reasons given in the Applicant's submissions at Issue Specific Hearing 8 (REP5-018), any concerns about the running of the workshop were misplaced and did not fairly represent the transparent discussions which the Applicant sought to encourage.

56. The Applicant also notes that the policy seeks engagement with a view to ensuring that "solutions are sought that allow offshore wind farms and navigation uses of the sea to successfully co-exist". The Applicant has for its part made extensive efforts to

find a solution to accommodate the perceived concerns of IPs including the PLA/ESL. The SEZ has been designed to achieve that objective and the extensive evidence submitted with the application and through the examination demonstrates that the TEOW and stakeholders can successfully co-exist as advised by policy.

57. Paragraph 2.6.167 advises that "mitigation measures may be possible to negate or reduce effects on navigation to a level sufficient to enable the IPC to grant consent". The NRA and NRAA propose a suite of mitigation measures to ensure that navigational risk is minimised; and although the Applicant does not consider that any further mitigation is necessary, is prepared to commit to a scheme which allows for any evidence-based commercial effects relating to the relocation of the Tongue pilot boarding diamond to be the subject of compensation. This confirms, if confirmation were needed, that any perceived residual effects arising from the development of the TEOW can be satisfactorily addressed and that consent can be granted.

Other issues

58. During the examination, questions were raised about the relevance of other policy documents to the determination of the application, particularly in relation to shipping and navigation issues. These included the NPS on Ports ("NPSP").

59. Section 104(2) of the Planning Act 2008 provides that in deciding the application the Secretary of State must have regard to (a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement").

60. NPSP is not a policy statement which has effect in relation to the development proposed in this case, essentially an offshore windfarm. NPSP is directed at new port development (see eg paragraphs 1.2, 3.5.1). NPS EN-3 is instead directed at the proposal.

61. In relation to section 104(2)(d)) ("any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision"), the only relevance that the NPSP could have would be by what the PoT and LG described as "contextual and background" information. There is no dispute in general terms that the potential effects of proposals on the commercial operation of ports is capable of being important and relevant, but beyond contextual material there is nothing in NPSP which was important and relevant by way of actual policy guidance that advises how this application for this project should be determined in this respect. The relevant NPS policy vehicle is NPS EN-3 which gives guidance on how the effect of proposals on

shipping routes (and potential economic impacts on shipping and navigation industry) should be assessed.

62. Section 104(2) also provides that "In deciding the application the Secretary of State must have regard to—…(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009" ("MACAA 2009").

63. Section 59 of MACAA 2009 provides that "(3) To the extent that the decision relates to a marine plan area, any marine plan which is in effect for that area is an appropriate marine policy document" and "(5) Any MPS which is in effect is an appropriate marine policy document for each of the following public authorities: (a) any Minister of the Crown…".

64. Dealing first with "any MPS", the MPS (2011) is in effect and is an appropriate marine policy document.

65. The MPS contains significant support for offshore renewables development:

> "3.3.1 A secure, sustainable and affordable supply of energy is of central importance to the economic and social well-being of the UK. The marine environment will make an increasingly major contribution to the provision of the UK's energy supply and distribution… Contributing to securing the UK's energy objectives, while protecting the environment, will be a priority for marine planning…
>
> 3.3.3 A significant part of the renewable energy required to meet these targets and objectives will come from marine sources. Offshore wind is expected to provide the largest single renewable electricity contribution as we move towards 2020 and beyond.
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> 3.3.4 When decision makers are examining and determining applications for energy infrastructure and marine plan authorities are developing Marine Plans they should take into account:
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> • The national level of need for energy infrastructure, as set out in the Overarching National Policy Statement for Energy (EN-1)
>
> • The positive wider environmental, societal and economic benefits of low carbon electricity generation…
>
> • That…renewable energy resources can only be developed where the resource exists and where economically feasible.

> • The potential impact of inward investment in offshore wind…as well as the impact of associated employment opportunities on the regeneration of local and national economies. All of these activities support the objective of developing the UK's low carbon manufacturing capability...
>
> 3.3.19 The UK has some of the best wind resources in the world and offshore wind will play an important and growing part in meeting our renewable energy and carbon emission targets and improving energy security by 2020, and afterwards towards 2050….As the most mature of the offshore renewable energy technologies, it has the potential to have the biggest impact in the medium-term on security of energy supply and carbon emission reductions through its commercial scale output. Expansion of the offshore wind supply is likely to require significant investment in new high-value manufacturing capability with potential to regenerate local and national economies and provide employment. 3.3.23 Renewable energy offers the potential for significant broad-scale environmental benefits through mitigating greenhouse gas emissions from energy production. In addition there are a number of potentially significant socio-economic benefits from the sector including employment opportunities, export business and energy security".

66. The MPS also recognises (paragraph 3.4.5) that shipping is an essential and valuable economic activity for the UK; and paragraph 3.4.7 advises that:

> "Increased competition for marine resources may affect the sea space available for the safe navigation of ships. Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety and ensure that their decisions are in compliance with international maritime law".

67. The Applicant has, for reasons set out above, sought to minimise negative impacts on these receptors. There is no suggestion of any conflict with any international obligations under maritime law, as explained above in relation to EN-3 paragraph 2.6.161.

68. As for Marine Plans, the project falls within the South East Marine Plan area but this plan is in draft form and is not in effect. It would cover the area of the application site and study area has not, as yet, been adopted and is therefore not an "appropriate marine policy document" It contains draft policies which may otherwise be regarded as relevant to the extent that they are intended to complement general policies in the MPS, but they are in draft form only at this stage. Policy SE-PS-1 requires proposals to

demonstrate that impacts on port operations have been avoided, minimised or mitigated or, if mitigation is not possible, require that a case is made for the proposals.

69. Impacts on ports are not therefore prohibited by the draft policy, however as the Applicant has explained it considers that the proposals would not cause any material effects on port activity. The mitigation proposed by the Applicant, including risk controls established through the NRA and NRAA, would mitigate any effects. to the extent that there are considered to be residual effects, then as explained above a case for the proposals can be made by way of the benefits it would deliver, as concluded above in relation to paragraphs 2.6.162-3.

70. Policies SE-PS-2 and 3 protect against proposals which require static sea infrastructure that encroaches upon IMO routeing systems or (undefined) high density traffic routes. The infrastructure in the proposals would not encroach on any such routes.

71. The East Inshore and East Offshore Marine Plans were published as a single document in 2014. The East Marine Plan (EMP) covers large area of the southern north sea including approaches to the outer Thames Estuary from the north and is therefore outwith the application site and the 5nm study area for shipping and navigation. It is not therefore considered to be an appropriate marine policy document. Its policies are of doubtful relevance for the same reason, but as with the draft South East Marine Plan its broad objectives are intended to be consistent with the MPS and the proposals would comply with them in any event.

72. Policies PS1 and PS2 protect against infrastructure that encroaches into IMO Shipping Routes or identified important navigation routes in the plan area. The EMP contains some relevant contextual information on shipping routes which inform these policies. IMO Designated Routes are shown in Figure 18 (of the EMP), which clearly identifies the Sunk and Dover Straights Traffic Separation Schemes that are not physically affected by the project. Important shipping routes within the plan area are also defined on Figure 18. These routes are presented in Figure 11 of the NRA (PINS ref: APP-089), which demonstrates that the project sits outside of these routes. The proposals would not therefore conflict with these policies.

73. Policy PS3 relating to port activity is drafted in similar terms to policy SE-PS-2 of the draft South East Marine Plan. It does not relate to proposals outside the plan area, but reflects the MPS in so far as it does not prohibit impacts on port operations and allows a case to be made where impacts would arise. As mentioned above, the Applicant does not consider that any such impacts would arise.

Conclusion

74. For all these reasons the Applicant submits that the project would comply with all material policy relating to shipping and navigation, in particular guidance with EN-3.