

**DEADLINE 3 REPRESENTATIONS**

**ON BEHALF OF PORT OF TILBURY LONDON LIMITED AND LONDON GATEWAY  
PORT LIMITED**

**REGARDING AN APPLICATION FOR A DEVELOPMENT CONSENT ORDER IN  
RESPECT OF THE PROPOSED THANET EXTENSION OFFSHORE WIND FARM**

**5<sup>TH</sup> MARCH 2019**

## 1) Introduction

This document provides a response on behalf of Port of Tilbury London Limited (POTLL – ‘Other Person’ reference TEOW-OP006) and London Gateway Port Limited (LGPL – Registration No. 20011837) to a number of matters requested to be addressed within Deadline 3 (5<sup>th</sup> March 2019) submissions as set out in the Examining Authority’s (ExA’s) revised Rule 8 letter dated 1<sup>st</sup> March 2019 (Document Reference PD-010).

For clarification, where the representations herein respond to matters requested to be addressed by the ExA within a Hearing Agenda Item or Action Point, the ExA’s reference is used. Similarly, where comments relate to the Deadline 2 submissions of the Applicant or other Interested Parties the submission document reference is given. In each case, for convenience, the specific item, action or representation being addressed is first set out (in blue type).

## 2) Written Submission of Oral Case

Included at Appendix 1.

## 3) Post Hearing (ISH5) Submission

### 3.1 Comment of Relevant Policy and Guidance

A Planning Policy Position Paper is included at Annex 1 to POTLL and LGPL’s Written Submission of Oral Case (see Appendix 1). This includes a response to ISH5 Action Points 1 and 2.

### 3.2 Matters Outstanding from Deadline 1

*a) Port of Tilbury London (POTL) and DP World London Gateway (DPWLG) ships using the inshore route*

From the AIS data supplied by the PLA year ending 30/11/18:

- 534 vessels used the inshore route inbound for POTL and it would be reasonable to estimate that a similar number of vessels used the inshore route outbound.
- 79 vessels used the inshore route inbound for DPWLG. It is not clear that the same number of vessels used the inshore route outbound.
- A total of 4,114 vessel passages (inbound and outbound) was recorded in the AIS data using the inshore route.

*b) POTL and DPWLG ships using NE Spit*

From the PLA POLARIS data year ending 30/11/18:

- For POTL vessels (inbound and outbound) there were a total of 3,127 recorded piloted trips. Of the inbound trips 754 included picking up a pilot at the NE Spit. The POLARIS data base does not enable us to determine how many outbound piloted trips included dropping off a pilot at the NE Spit. Approximately 50% of the inbound piloted vessels to POTL pick up a pilot at the NE Spit.
- For DPWLG vessels (inbound and outbound) there were a total of 2,134 recorded piloted trips. Of the inbound trips 160 included picking up a pilot at the NE Spit. The POLARIS data base does not enable us to determine how many outbound piloted trips included dropping off a pilot at the NE Spit. Approximately 15% of the inbound piloted vessels to DPWLG pick up a pilot at the NE Spit.

#### 4) Comments on Deadline 2 Submissions

The following comments are submitted in response to the Deadline 2 submissions of the Applicant within the document titled "Appendix 10 to Deadline 2 Submission: Applicants Comments on Response to the Examining Authority's First Written Questions" (Document Reference REP2-005).

Reference: PINS Question Number 1.12.1: Applicants Comment on IP's Response:

- a) *"The applicant does not agree with the 400m LOA and 14m draft vessel which is significantly in excess (by >100m LOA and 3.9m draught) that that evidenced by the vessel traffic survey data (as per Section 5 Para 34 – 36 and accompanying schematics) also conflicts with the response of PLA and ESL."*

As set out in section 3.2 of this submission document and addressed in POTLL and LGPL's Written Submission of Oral Case, POTLL and LGPL consider that the survey data carried out on behalf of the Applicant in February 2017 and June 2017, and supplemented by AIS data for the period December 2016 to February 2017, is not representative of the current and future baseline against which the proposals should prudently be assessed. This is due to a material change in the number and characteristics of vessels visiting the Port of London in the period which has elapsed since those surveys were undertaken. For example, in April 2017 LGPL secured commitment from THE Alliance, one of the World's largest shipping alliances operated by Hapag Lloyd, Ocean Network Express and Yang Ming, which resulted in the introduction of five additional weekly vessel calls to DPWLG including weekly calls by 15,000 TEU capacity, 370m LOA vessels. This resulted in an increase in annualised contained throughput at DPWLG of approximately 310,000 TEU (a 40% uplift on 2016 volumes). Prior to that time the largest vessel contracted to call at DPWLG was the Cap San Nicolas at 299m LOA and 12.4m draught. Subsequently, in November 2018 LGPL secured commitment from 2M, the world's largest shipping alliance operated by Maersk Line and MSC, which resulted in the introduction of an additional weekly vessel call at DPWLG of 19,500 TEU capacity, 400m LOA vessel.

Recent growth in trade at POTLL and LGPL was also highlighted within the Ports' Deadline 2 Representations (Document Reference REP2-050), which highlighted a 22.5% uplift in combined trade (tonnes) between 2016 and 2018. Further committed development (including DPWLG berths 4 to 6 and 'Tilbury2') will result in significant additional growth over the reasonable planning horizon.

POTLL and LGPL have now carried out an analysis of POLARIS and AIS data for the 12 month period from 1<sup>st</sup> December 2017 to 30<sup>th</sup> November 2018. Such analysis has focused on routing and pilot boarding characteristics of vessels visiting POTL and DPWLG and identifies at least seven vessels in excess of 299m LOA utilising the inshore channel and NE Spit boarding station, with the largest vessel being of 333m LOA and 11.3m draught. It is likely that significantly larger ships would be able to use the inshore route at an appropriate draught in the future.

We note that reliance is also placed by the Applicant upon the surveys which informed the NRA in the following Deadline 2 submission documents:

- [Appendix 4 to Deadline 2 Submission: Applicant's Response to Written Representation – Pilotage \(Document Reference REP2-012\), Section 2.5, Paragraph 23](#)
- [Annex A to Appendix 3 to Deadline 2 Submission: Tabular Response to Shipping and Navigation Written Representations \(Document Reference REP2-027\), Section 5, Action 17 Bullet Point 6 \(page 51\)](#)
- [Appendix 2 to Deadline 2 Submission: Applicant's Response to Written Representations on the theme of Ports/Shipping Routes \(Document Reference REP2-014\), Section 2.3, Paragraphs 16 to 19](#)

As set out above, we consider the Applicant's survey data to be unrepresentative of the current baseline and the Applicant's predicted 10% increase in commercial vessel activity (see Applicant's Response to ExA's First Written Questions – EXQ 1.12.1 (Document Reference REP1-051) Section 9, Paragraph 49) to be unrepresentative of likely growth in the reasonable planning horizon. As such any assessment which relies upon that survey data or uplift prediction is likely to be flawed. For this reason we consider that the NRA needs to be carried out again to place IPs, the Applicant and the ExA in a position to accurately assess the impact of the proposed development.

## **5) Response to ISH5 Action Points**

### **Action 1 – Policy Considerations**

A Planning Policy Position Paper is included at Annex 1 to POTLL and LGPL's Written Submission of Oral Case (see Appendix 1).

### **Action 2 – Legal Submissions**

This matter is discussed within the Planning Policy Position Paper, which is included at Annex 1 to POTLL and LGPL's Written Submission of Oral Case (see Appendix 1).

**Action 5 – Navigational Risk Assessment (NRA); written submission in respect of Agenda Item 4**

The written submissions encapsulating POTLL and LGPL's responses to matters relating to technical considerations of the NRA are set out within POTLL and LGPL's Written Submission of Oral Case (see Appendix 1). In respect of the specific points in Action 5, POTLL and LGPL respond as follows:

1. *Technical responses focusing on matters still in technical dispute and identifying what solution, if any, there might be to the areas of disagreement.*

See item 4 of POTLL and LGPL's Written Submission of Oral Case including the proposal for updates to the NRA and the Pilot Transfer Simulation Study. In respect of inputs for such further assessment, at this stage POTLL and LGPL would broadly characterise the current agreement between the Applicant and the two ports as:

- Matters agreed – Ship sizes (length/draught/beam).
- Matters still to be agreed – Required sea room (for passage or pilot boarding), metocean conditions, interaction of other vessels (overtaking and passing scenarios), unforeseen circumstances.

2. *Best positions on progress: an indication from the Applicant and IPs whether or not there is the potential for a convergence of opinions or whether a fully adjudicated position is going to be required going forward.*

See item 7 – "Technical Workshop" below. POTLL and LGPL are hopeful that agreement can be reached however until specific project amendments have been presented and properly assessed, it is not possible to comment on whether an adjudicated position will be required going forward. The two ports hope to be in a position to comment further at Deadlines 4 and 4A following analysis of the Applicant's Deadline 3 submissions and potential further discussions between the parties.

3. *If a matter is still unagreed /contended at D3, submissions should identify which technical matters require adjudication by the ExA, views that expert evidence will be provided, whether cross-examination may be sought and how much hearing time might be needed to inform preparation of an amendment to the examination timetable.*

As per the response above, until specific project amendments have been presented and properly assessed, the two ports are unable to confirm the exact position in respect of adjudication at this stage.

### **Action 6 – Vessel Deviation Distance**

Available AIS data clearly confirms the importance of the inshore route as a time saving route for ships bound for the Thames Estuary, in addition to other locations.

If for any reason, the inshore route becomes more restricted and ships are no longer able to transit at present then as set out in PoTLL and LGPL's Written Representation submitted at Deadline 1 [REP1-148] at Annex 3 to Appendix A, the extra distance incurred in not using the inshore route is estimated at 14.4nm.

### **Action 7 – Technical Workshop**

POTLL and LGPL were represented at the technical workshop which took place in London on 27<sup>th</sup> February 2019. The following note of key outcomes, which has since been circulated by the Applicant, is broadly endorsed by POTLL and LGPL:

- "The Applicant will be making an amendment to the project in recognition of the submissions by the Interested Parties. This will be by Deadline 4.
- The IPs will reserve their judgement on these amendments until presented prior to Deadline 4 with assessment of how this has affected the outcomes of the NRA.
- Parameters for sea room should include consideration of the largest vessels (being 400, 366, 333 and 299m in length), vessel handling characteristics, and a worse case beam of 60m and draught of 11.5m.
- Points of reference for considering sea room distances are Elbow Buoy, North East Spit Pilot Diamond, North East Spit Buoy and Tongue Deep Water Diamond.
- MGN543 is considered to be a starting point for considering sea room. Reference was also made to the World Ocean Council, Nautical Institute and IALA special planning paper titled "*The Shipping Industry and Marine Spatial Planning – A Professional Approach – November 2013*".
- Whilst no sea room requirements were charted or drawn by the IP's, additional narrative and qualitative feedback was given in order to be considered by the Applicant."

In summary the parties are hopeful that progress can be made but the IPs do not feel able to comment on which side of the 'y-fork' (as per the ExA's ISH5 analogy) the examination is currently on until specific project amendments have been presented and properly assessed. It is not certain that adjudication can be avoided, but all parties are open to discussing this matter further prior to Deadline 4 with the possibility of there being agreement by this time.

## **6) Requests to be Heard at ISH8**

POTLL and LGPL wish to be heard at ISH8 and expect to be represented by the following persons:

Mr Robbie Owen (Pinsent Masons LLP)  
Mr Matthew Carpenter (Pinsent Masons LLP)  
Mr Vincent Crockett (HR Wallingford)  
Mr Trevor Hutchinson (TH Planning and Transportation)

Should additional representatives wish to attend on behalf of POTLL and LGPL then the two ports will inform the ExA in due course.

## **7) Arrangements for Accompanied Site Inspection (15<sup>th</sup> April 2019)**

Proposed arrangements for the Accompanied Site Inspection to POTL and DPWLG on the 15<sup>th</sup> April 2019 have been the subject of e-mail correspondence between the two ports and the PINS Thanet Extension OWF Case Officer Team between 26<sup>th</sup> and 28<sup>th</sup> February 2019. From such discussions the following proposed itinerary has emerged:

### **7.1 Visit 1 - POTL**

- a) Arrival at POTL (Report to Leslie Ford House, RM18 7EH) (parking available)
- b) Short Briefing (safety/housekeeping)
- c) Coach transfer to tour boat
- d) Board tour boat
- e) Boat tour of POTL and Tilbury 2 facilities/site
- f) Disembark Boat/board coach
- g) Coach tour of landside facilities (including logistics park)
- e) Return to Leslie Ford House
- f) Disembark coach
- g) Depart site

### **7.2 Travel to LGPL (Allow 30 minutes)**

### **7.3 Visit 2 – LGPL**

- a) Arrival at London Gateway Port (Report to No.1 London Gateway, Stanford-le-Hope, Essex SS17 9DY) (Parking available)
- b) Short briefing (safety/housekeeping)
- c) Board Coach
- d) Tour of port/logistics park facilities
- e) Arrival back at No.1 London Gateway
- f) Disembark transport
- g) Depart site

The Accompanied Site Inspections will be guided by Trevor Hutchinson (planning and transportation consultant) accompanied by Stuart Wallace (POTLL – Chief Operating Officer for Forth Ports), Paul Dale (POTLL – Asset and Site Director) and Andrew

Bowen (LGPL Port Operations Director). We recommend that 2 hours is allowed for each Accompanied Site Inspection. Where it is required Personal Protective Equipment will be provided however attendees may wish to bring their own protective footwear. PPE will not be required during the boat tour or whilst aboard the tour coaches but may be required if attendees wish to disembark the coach during either tour whilst within the port facilities. All attendees will be required to bring photographic proof of identity (driver's licence or passport would suffice). If possible, POTLL and LGPL would be grateful for receipt of a list of attendees by 12<sup>th</sup> April 2019.

POTLL and LGPL understand that the ExA anticipates a total of approximately 20 attendees, however the final numbers will be confirmed following receipt of Deadline 3 submissions.



**APPENDIX 1**  
**WRITTEN SUBMISSION OF ORAL CASE**



**APPLICATION BY VATTENFALL WIND POWER LIMITED FOR A DCO FOR THE THANET EXTENSION OFFSHORE WIND FARM  
ISSUE SPECIFIC HEARING 5 (ISH5) ON MARITIME, SHIPPING, NAVIGATION SAFETY AND RECREATIONAL SEA USE ISSUES (20 FEBRUARY 2019)  
WRITTEN SUMMARY OF SUBMISSIONS  
OF  
PORT OF TILBURY LONDON LIMITED AND LONDON GATEWAY PORT LIMITED  
SUBMITTED AT DEADLINE 3 (5 MARCH 2019)**

1. ISH5 was held at 10:00am on 20 February 2019 at Building 500, Discovery Park, Ramsgate Road, Sandwich, CT13 9FF. ISH5 took the form of running through items listed in the agenda published by the Examining Authority ("**ExA**") on 7 February 2019 (the "**Agenda**"). The format of this note follows that of the Agenda and refers to the joint responses of Port of Tilbury London Limited ("**PoTLL**") and London Gateway Port Limited ("**LGPL**") given at ISH5. There were also a number of Agenda items which there was insufficient time to cover at ISH5 and this note provides the joint responses of PoTLL and LGPL to such Agenda items. The ExA published its "ISH5: Hearing Action Points" document on 22 February 2019 and this note refers to the actions noted in that document where appropriate.
2. Annex 1 to this note is a Policy Position Paper which sets out the joint position of PoTLL and LGPL in respect of policy considerations relevant to the Application. Such policy considerations encapsulate the items discussed at item 3 of the Agenda and Action 1 of the ISH5 Action Points.

Agenda Item/ Issue	Response
<b>(1) Welcome, introductions and arrangements for this Issue Specific Hearing 2 (ISH5)</b>	

Agenda Item/ Issue	Response
<p>In attendance on behalf of PoTLL and LGPL were:</p> <ul style="list-style-type: none"> <li>• Trevor Hutchinson (TH Planning and Transportation);</li> <li>• Colin Hitchcock (Harbour Master, LGPL);</li> <li>• Geoff Holland (Harbour Master, PoTLL);</li> <li>• Robbie Owen (Pinsent Masons LLP);</li> <li>• Matthew Carpenter (Pinsent Masons LLP); and</li> <li>• Vincent Crockett (HR Wallingford (HRW)).</li> </ul>	
<b>(2) Applicant's Position on ISH2 and Written Representations</b>	
<p>The ExA will ask the Applicant about the concerns expressed and mitigations sought in ISH2 and subsequent Written Representations, with particular reference to proposals to exclude wind turbine generator array areas from the red line boundary broadly to landward of the proposed development. Does the Applicant intend to address these with proposals for its own changes to the proposed development, or does it wish to sustain a position that all of the wind turbine generator array areas shown in the submitted application remain developable?</p>	<p>This Agenda item was for the Applicant.</p>
<p>If required, the ExA will invite discussion of any changes to</p>	<p>The <b>ExA</b> explained that matters may have moved on since the Agenda was published but that there was a pressing need to consider whether agreement could be reached between the Applicant and the various Interested Parties (the "<b>IPs</b>"). There</p>

Agenda Item/ Issue	Response
<p>the proposed development that might be sought and will consider if any additional procedural steps may be needed in the remainder of the Examination period. Views will be sought from the Applicant and IPs.</p>	<p>was essentially a "fork in the road" and it would be helpful to consider whether the full extent of amendments proposed by the IPs to be made to the Order Limits at Deadline 1 would be required.</p> <p>In response to the initial remarks of the ExA, <b>Robbie Owen</b> on behalf of LGPL and PoTLL agreed that the ExA's summary was a helpful explanation with the qualification that an agreed position was unlikely to be reached during ISH5. He explained that LGPL and PoTLL did not consider that the Navigation Risk Assessment (<b>NRA</b>) and the Pilot Transfer Bridge Simulation Report were robust documents which can be relied upon in their current form. As such, LGPL and PoTLL maintain that the Order Limits need to be revised as per the Order Limits Plan submitted at Deadline 1 (Annex 4 to Appendix A of PoTLL and LGPL's Deadline 1 Written Representations [REP1-148]). LGPL and PoTLL are currently awaiting the results of expert assessment with HRW now retained to provide such assessment. The assessment was not carried out previously as the two ports were still playing 'catch-up' given that they were not consulted on the application at any stage.</p>
<p><b>(3) Policy Considerations</b></p> <p><b>The ExA will ask IPs responsible for and operating any ports, harbours and channels to summarise their positions and to identify the following:</b></p>	

Agenda Item/ Issue	Response
(a) To what extent is NPS Ports applicable to the proposed development?	<p>This matter was discussed at length at ISH5 with a great deal of input from PoTLL and LGPL however the main outcome was a request from the ExA for the various IPs to provide legal submissions on the points outlined under the banner of Policy Considerations in Agenda item 3.</p> <p>The ExA's ISH5: Hearing Action Points requests at actions 1 and 2:</p> <p><b>1 - Policy Considerations –</b></p> <p><i>All IPs to provide full and specific details of what they consider to be the important and relevant policy considerations to this case.</i></p> <p><b>2 - Legal submissions –</b></p> <p><i>Written legal submissions are sought from applicant, Trinity House (THLS), the MCA and other IPs concerned with the following matters:</i></p> <ul style="list-style-type: none"> <li>• <i>Who determines what is a sea lane for the purposes of EN3 para 2.6.61-63 – how is a sea lane recognised? What is the appropriate applicable provision of UNCLOS, if one exists? What are the consequences of this?</i></li> <li>• <i>Whether a sea lane is required to be formally charted and/or designated?</i></li> <li>• <i>To what extent are the provisions of IMO FSA MEPC.2/Circ12/Rev.2 capable of being something that constitute part of or directly derived from the UK's membership of the IMO and hence an international obligation relevant to s104 of the PA2008?</i></li> </ul> <p>PoTLL and LGPL have therefore covered such points and all of the points discussed under Agenda Item 3 (save for where specifically noted below) in a separate document (the Policy Position Paper which is included at Annex 1 to this note). To avoid repetition these points are not re-stated in the main body of this note.</p>
(b) Does the policy justification for the proposed TEOW development have the effect of exerting a counter-force against the 'compelling need for additional port capacity'? If so, what weight should be accorded to that effect?	See Policy Position Paper at Annex 1.
(c) Which particular provisions of NPSP might be relevant?	<b>Robbie Owen</b> on behalf of PoTLL and LGPL explained that the relevant provisions had been outlined in section 3 of PoTLL

Agenda Item/ Issue	Response
	and LGPL's Deadline 1 Written Representations [REP1-148].
(d) What weight might be accorded to them?	See Policy Position Paper at Annex 1.
(e) NPS EN-1 section 5.13 addresses (inter alia) 'transport' but does not refer in specific terms to maritime navigation. Are any general principles arising from that policy applicable to this application?	See Policy Position Paper at Annex 1.
(f) Are the provisions of NPS EN-1 paragraph 5.13.12 relevant?	See Policy Position Paper at Annex 1.

<p>(g) In respect to NPS EN-3 paragraphs 2.6.147 to 2.6.175,</p> <p>i. Would the proposed development 'pose unacceptable risks to navigational safety after mitigation measures have been adopted'? (2.6.147) and if so, can additional design or mitigation measures be provided to address these?</p> <p>ii. Has there been sufficient and effective engagement between the Applicant and maritime navigation interests to 'allow [the Thanet OWFE] and navigation uses of the sea to successfully co-exist' (2.6.153) and if not, what additionally needs to be done?</p> <p>iii. Is the test in NPS EN-3 paragraph 2.6.161 met: is the proposed development likely to cause 'interference with the use of recognised sea lanes essential to international navigation' and if so, can the effect of this interference be removed by additional design or mitigation measures?</p> <p>iv. Have sufficient steps been</p>	<p>See Policy Position Paper at Annex 1.</p>
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<p>taken to avoid or minimise 'disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade'? If not, what additional steps can be taken? (2.6.162) (The question of residual effect needs to be dealt with in the April hearings.</p>	
<p>The Applicant will be provided with a right of reply.</p> <p>The ExA will invite discussion of the consequences of the policy position and seek views from the Applicant and IPs.</p>	<p>This Agenda item was for the Applicant.</p>
<p><b>(4) Technical Considerations: Navigation Risk Assessment (NRA)</b></p>	
<p>The ExA will ask IPs responsible for and operating any ports, harbours and channels to summarise their positions and to identify the following:</p>	
<p>(a) Was there adequate technical stakeholder engagement in the framing of the questions to be addressed by the NRA (taking account of guidance in MGN 543)?</p>	<p>Item 5 of the ExA's ISH5: Hearing Action Points requires that "<i>All Interested Parties are to make written submissions encapsulating their responses to matters relating to technical considerations of the Navigation Risk Assessment (NRA) using the structure of the items listed under Item 4 of the agenda.</i>" PoTLL and LGPL have provided their joint response to Agenda item 4 below as well as the addition of some submissions made at ISH5.</p> <p><b>Robbie Owen</b> on behalf of PoTLL and LGPL explained that the two ports had not been involved in the process of drafting the NRA having not been consulted on the proposals. He explained that PoTLL and LGPL had since retained the services of HRW and that Vincent Crockett (of HRW) would provide a view on the draft NRA.</p> <p><b>Vincent Crockett</b> set out that HRW provide real time navigation simulation services and have worked with Marico Marine (who are assisting the Applicant in respect of shipping and navigation assessment) in the past. He explained that the NRA is a comprehensive document however it does have a number of difficulties and the reader is led astray regarding the importance of the ports in the assessment. The NRA does not mention London Gateway Port or the Port of Tilbury but it</p>



does mention the Port of Ramsgate. There are a large number of ships passing through the inshore route (which should not be referred to as a channel) and the sensitivity of the location has not been properly considered.

Generally, the NRA fails to appreciate the strategic importance of the London Gateway terminal as a major container terminal generating over 2,000 ship movements in the period December 2017 to November 2018 with significant additional committed growth. In particular, no consideration was given to the likelihood that ships of over 11,000 TEU geometric capacity would use the inshore route.

Future marine traffic growth is dealt with in a largely superficial manner in Section 6 of the NRA. Section 6 comprises 3 pages with the first page, primarily Section 6.1, providing statistics for United Kingdom major ports between 2000 and 2016 to suggest a continuing trend of declining volumes, expressed as tonnages, without providing any information on unitised cargo, containers and RoRo cargoes, or the several major container terminals in the south-east of the United Kingdom. No mention is made of the Tilbury2 development and there is no mention of the Port of Tilbury in the NRA at all. In this respect, Tilbury's London Container Terminal is one of the largest reefer container facilities in Europe and the importance of unimpeded maritime access to and from the terminal for high value cargoes may be recognising by noting that Tilbury's London Container Terminal alone generated over 420 short sea and deep sea transits through Gate 1 providing a total geometric capacity of almost 0.5 million TEU through the PLA's AIS Gate 1.

Section 6.1 makes the valid point that as ship size increases there may be fewer port calls but fails to recognise that the London Gateway container terminal has only been in operation since 2013 and is still in a high growth phase.

Section 6.2 mentions the Port of Ramsgate before the Peel operated Medway Ports operation and in particular does not mention that there is an LNG import terminal on the Isle of Grain handling the largest LNG carriers currently in operation. It was noted by Estuary Services Limited at ISH5 that LNG carriers have used the inshore route, albeit on rare occasions. No mention is made of the Harwich Haven Ports including Felixstowe, Harwich, Ipswich and Mistley in Section 6 even though these ports contribute to the complex vessel traffic patterns in and around the Thames Estuary and the Sunk Pilot Station provides services to ships entering the Thames Estuary including destined for the Port of London and Medway Ports.

The second paragraph of Section 6.2 suggests that fewer vessels may use the inshore route but provides no basis for this statement. In this respect, it is noted that PLA Gate 1 AIS records indicate that at least 2 RoRo ships used the Port of Ramsgate to import vehicles in the period December 2017/November 2018 and a further RoRo ship called to discharge cars in January 2019. Current United Kingdom Brexit preparations suggest that Ramsgate may be important in providing additional RoRo terminal capacity.

Section 6.3 of the NRA concedes that despite a predicted national decline in maritime trade, an increase in maritime trade may be expected at the Port of London.

	<p>In respect of the Pilot Transfer Bridge Simulation Report, the key point to consider is whether there will be sufficient space for a ship to manoeuvre to transfer a pilot(s). As a starting point, the study only considered ships of up to 240m in length which is not long enough given that ships of over 330m transit through the inshore route and it is clear that larger ships will require more space to accommodate their greater swept paths. Accordingly, the study cannot be relied upon and a larger range of ships is required to be examined.</p> <p>Representatives of LGPL and PoTTL attended the technical workshop with the Applicant on 27 February 2019. The meeting provided a useful forum for an exchange of information but no significant agreement was reached other than on the range of ships that should be considered in any future assessment studies. The agreed ship parameters were ship lengths of 400, 366, 333 and 299m with a maximum beam of 60m and a maximum static draught of 11.5m.</p>
<p>(b) Are there discretionary elements of the NRA methodology on which expert judgment has been made by regulatory bodies, and if so what such decisions were made?</p>	<p>The most relevant section of the NRA for this question is considered to be Section 4. Section 4 of the NRA summarises the consultations held with regulatory bodies, including the MCA. It is not apparent from a review of Section 4 that expert judgements have been made by regulatory authorities. In particular, no judgements are recorded on the use of MGN 543.</p>
<p>(c) Were the opinions of relevant technical experts taken sufficiently into account and was the NRA research design and assessment conclusions sufficiently conformed to their input?</p>	<p>No. In particular, the NRA fails to recognise the complexity of navigation associated with the routes leading around the existing wind farm, the likely growth in shipping using these routes and the prospect that larger ships are likely to use the inshore route in the future.</p>
<p>(d) Seasonality – did the NRA take a sufficiently representative sample and season of shipping movements into account?</p>	<p>Given the complexity of navigation within the study area, it is considered that the fieldwork and AIS sampling periods should have been significantly longer.</p> <p><b>Vincent Crockett</b> on behalf of PoTLL and LGPL explained that there was a great deal of seasonality which needed to be taken into account. For example, container trades are well recognised as having a pre-Christmas build up and a corresponding January decline. There are also seasonality issues in respect of fishing and more importantly, the survey period was clearly not sufficiently long enough given that it missed bigger ships passing through the route.</p> <p><b>Robbie Owen</b> on behalf of PoTLL and LGPL agreed with the Applicant and other IPs that there was a need for technical discussions between the various experts in respect of the NRA. He also agreed that there may be additional time required in the scheduled April shipping and navigation hearings to properly ventilate the issues and suggested that there may be a</p>

	<p>need for cross-examination of the evidence.</p> <p><b>Vincent Crockett</b> explained that in addition to the deficiencies in seasonality there was a major issue in the NRA regarding its assessment of the future baseline. Section 6 of the NRA does not give a proper view of the ships which will pass in the future and what the vessel traffic mix will look like and demand has not been considered in a way which understands the complexity of the figures of how the ports in the Thames Estuary will develop. <b>Robbie Owen</b> added that the 10% allowed for growth in the NRA was clearly deficient and that it would be helpful to consider why that was considered by the Applicant to be appropriate given the context of the growth of the two ports. He referred to PoTLL and LGPL's Deadline 2 Submission [REP2-050] in which it was explained that there had been significant growth at the two ports since the surveys which informed the NRA and Pilot Transfer Bridge Simulation Report, with significant additional growth committed.</p> <p>POTLL has now (as of 20 February 2019) been granted development consent for the construction of a new port facility (known as Tilbury2) located adjacent to the existing port. Tilbury2 will result in a significant increase in the total tonnage handled through the combined operation, with the Tilbury2 facility being a dedicated Ro-Ro and CMAT (Construction Materials and Aggregates Terminal). Tilbury2 will start construction when the DCO comes into force, on 13 March 2019.</p> <p>DPWLG also anticipates significant growth. In the 2018 calendar year throughput equalled approximately 1.3 million TEU (Twenty Foot Equivalent container units) per annum (equivalent to approximately 11 million tonnes of cargo) but once fully developed DPWLG will have a consented capacity of 3.5 million TEU per annum</p> <p>The above indicates that growth will be considerably more than the 10% growth anticipated by the NRA and as shown at Deadline 2 by PoTLL and LGPL the two ports had combined growth of 22.5% between 2016 (the end of the study period which informed the growth assumptions utilised in the NRA) and 2018. It seems, therefore, that the input factors of the NRA need revisiting.</p>
<p>(e) Was the Pilot Transfer Bridge Simulation (PTBS) an adequate exercise for the magnitude of impact perceived in pre-app consultations?</p>	<p>No. Although there are presentational issues associated with the use of a tug instead of a pilot boat and other matters, the primary concern is that the adequacy of the space required for ships to manoeuvre to enable safe pilot transfers has not been examined adequately.</p> <p>This may be demonstrated by noting that large container ships with a length of 333m are using the North East Spit pilot boarding area and yet the longest ship considered in the simulation study was only 240m.</p> <p>It is clear that the swept path of a longer, higher windage container ship is likely to be much greater than that of a smaller 240m RoRo Container ship.</p>
<p>(f) The methodological basis for findings that marine risks have been reduced as low as</p>	<p>The methodological basis is well established and understood but as future demand is considered in a superficial manner in Section 6 of the NRA it is not clear that the collision modelling reported to have been carried out takes sufficient account of the space required for operations with significantly larger ships.</p>

reasonably possible (ALARP);	<p>For example, container ships with a length of greater than 330m navigate the inshore route.</p> <p>The methodological basis is in line with decision-making where the marine risks arise on less strategically important routes (as per paragraph 2.6.163 of NPS EN-3) as opposed to examination, consultation and negotiation over risks arising on major commercial navigation routes (as per paragraph 2.6.162 of NPS EN-3).</p>
(g) The basis for the relationship between risks controlled to ALARP, tolerable risks and the consistency of approaches taken in relation to navigation risk and marine safety and the assessment of risk significance in the ES more broadly;	<p>A key concern with the way that risk is presented in MGN543 is that a generally binary approach is presented. Item 11 of Annex 3 notes that the risk is “intolerable” if the Distance C to 90% of vessel traffic is less than a nautical mile but is “tolerable” if risk is reduced to ALARP.</p> <p>The joint World Ocean Council Nautical Institute IALA 2013 spatial planning paper on which Section 11 appears to be based notes that at a distance of 0.5 nautical miles, the risk is “high”, rather than tolerable but can reduced if ALARP measures are put in place. This appears to be a much more realistic approach.</p>
(h) Should the assessment of ALARP and Tolerability of Risk be reviewed independently of those undertaking the NRA?	<p>The NRA was undertaken by a competent organisation with a well-established track record in carrying out risk assessments. Accordingly, there should not normally be any need for an independent review.</p>
(i) If there are technical defects in the PTBS or the NRA itself, what is the minimum necessary action to rectify these and when must this be taken?	<p>Ideally, for the pilot transfer simulation study a repeat simulation study is required using a mutually agreed navigation simulation centre (probably not the PLA simulator or HR Wallingford although <i>in extremis</i> or in the interests of expediency the HR Wallingford simulation centre could be used) using mutually agreed ships and preferably current ships masters with no or limited experience of the study area.</p> <p>The simulation study should preferably comprise 2 principal components:</p> <ul style="list-style-type: none"> <li>• a demonstration of likely transit tracks through the inshore route and around the NE spit cardinal mark for a range of agreed ships and agreed environmental conditions, with and without the wind farm extension in place; and</li> <li>• a pilot transfer study using agreed ships with and without the wind farm extension in agreed environmental conditions. At least 2 pilot transfers should be carried out simultaneously.</li> </ul> <p>This study is likely to require 5 to 8 weeks to complete depending on simulator availability. A shorter time frame is possible depending on the relevant simulation centre’s workload.</p>

	<p>For the navigation risk assessment, there appear to be options to revise the existing assessment or to carry out a new assessment.</p> <p>Depending on the work involved a revised study may require 4 to 6 weeks to complete. It should be noted that if an extended period of fieldwork is required then this may delay revision of the risk assessment.</p>
<p>The Applicant will be provided with a right of reply.</p> <p>The ExA will invite discussion of the consequences of the NRA position and seek views from the Applicant and IPs.</p>	<p>This Agenda item was for the Applicant.</p>
<p><b>(5) Effects on Navigation in the approaches to Thames and Medway Ports</b></p>	
<p>The ExA will ask the Applicant to summarise its position on the following matters:</p>	
<p>(a) At ISH2, the Applicant and IPs did not agree on a definition of adequate sea room in the specific context of waters west and north-west of the array and hence the judgment of a prudent master on the continued navigability by large commercial vessels of the Inshore Route (Route 4 in the NRA) and useability of the NE Spit pilot station are not agreed. Is there a reasonable prospect of technical agreement being achieved on this point?</p>	<p>This Agenda item was for the Applicant.</p>
<p>(b) Does the Applicant agree with the characterisation of the effect of the proposed</p>	<p>This Agenda item was for the Applicant.</p>

<p>development on the use of the Inshore Route set out in the WRs of IPs at ISH2? If not, on what technical basis is the PLA/ESL WR incorrect?</p>	
<p>(c) Does the Applicant agree with the characterisation of the effect of the proposed development on the use of the NE Spit pilot station set out in the WRs of IPs? If not, on what technical basis are these WRs incorrect?</p>	<p>This Agenda item was for the Applicant.</p>
<p>(d) Does the Applicant agree with the characterisation of the effect of the proposed development on pilotage more generally as set out in the PLA WR? If not, on what technical basis is the PLA/ESL WR incorrect?</p>	<p>This Agenda item was for the Applicant.</p>
<p>(e) Does the Applicant agree that an effect of the siting of the proposed development may be to make a material increase in masters decisions to avoid the Inner Channel? If not, on what technical basis is the PLA/ESL WR incorrect?</p>	<p>This Agenda item was for the Applicant.</p>
<p>(f) Does the Applicant agree with the adoption of an additional 14.4NM / 1 hour steaming per ship as the 'cost' accrued to voyages where masters decide to avoid the Inner Channel? If not, on what</p>	<p>This Agenda item was for the Applicant.</p>

<p>technical basis is the PLA/ESL WR incorrect?</p>	
<p>The ExA will seek comments from regulatory and service bodies including the MCA, Trinity House Lighthouse Services, the shipping industry and pilotage bodies and IPs responsible for and operating any ports, harbours and channels.</p> <p>The Applicant will be provided with a right of reply.</p> <p>The ExA will seek clarification of the degree to which these matters are capable of resolution in additional technical work/ Statements of Common Ground (SoCGs) or if it is being asked to adjudicate matters that cannot be agreed. If the latter position is adopted, a discussion of the need for and examination of evidence for competing position at the April hearings will be held.</p>	<p><b>Robbie Owen</b> reiterated that the NRA has not provided a fair representation on the number and length of vessels on the inshore route and explained that HRW was in the process of analysing POLARIS and AIS data in respect of shipping numbers. He agreed that it would be useful to hold a workshop with the Applicant given the disagreement on a number of areas.</p> <p><b>Vincent Crockett</b> explained that an accepted technique for finding how much space or adequate sea room was available would be to carry out a real time Navigation Simulation Study using a suite of agreed ships which could take place with and without the wind farm extension in place. This could be carried out in a mutually agreed territory and there would then be rigorous data to use. He explained that it is often the case that experienced mariners will use simulators but will then say that they would not necessarily make the same decisions in practice. The important consideration is the space available and it does not matter who carried out the study provided the simulation centre is capable of carrying out port and channel design work and is preferably not solely a training institution.</p>
<p><b>(6) Mitigation of Effects on Navigation and Commerce</b></p> <p>The ExA will ask the Applicant to summarise its position and to identify the following:</p>	

<p>(a) What is the Applicant's response to the extent of the exclusion of waters from the array area within the RLB proposed by the ISH2 IPs at Deadline 1? Is the extent of the proposed exclusion necessary? What effects would it have on project viability?</p>	<p>This Agenda item was for the Applicant.</p>
<p>(b) If mitigation excluding waters from the array area is required, at what extent does it become material change and necessary to re-appraise and re-consult on the following submitted documents:  i. The NRA;  ii. The ES; and / or  iii. Any other documents...  iv. and how should any changes to these be brought forward?</p>	<p>This Agenda item was for the Applicant.</p>
<p>(c) The ExA will seek comments from regulatory and service IPs including the MCA, ports and harbours, pilotage bodies and Trinity House.</p>	<p>At this stage the proposed reduction to the RLB (i.e. the Order limits) remains the position of LGPL and PoTLL. See the Order Limits Plan (Annex 4 to Appendix A of PoTLL and LGPL's Written Representations [REP1-148]).</p> <p>As set out above, the two ports consider that updates to the NRA and the Pilot transfer simulation study are urgently required before PoTLL and LGPL can consider discussing adapting this proposed reduction in the RLB in any more detail.</p>
<p><b>(7) Any Other Marine and Related Considerations</b></p> <p>The ExA may raise any other consequential topics bearing on Shipping and Navigation topics as is expedient, having regard to the readiness of the persons present to address such matters, including but not limited to:</p>	



<p>(a) Economic and employment effects on marine industries.</p>	<p>POTLL and LGPL consider the Thanet OWFE to have the potential to significantly impact upon shipping, with a resulting significant impact on the efficient operation, resilience and competitiveness of POTL and DPWLG. It is to be noted that POTL and DPWLG currently provide approximately 4,100 and 1,000 direct jobs respectively.</p> <p>With committed and planned growth these figures are anticipated to rise to approximately 5,000 and 15,329 direct jobs with significant additional indirect employment opportunities arising. Thus, the potential exists for significant socio-economic effects on the local area and wider region.</p> <p>Whilst unable to quantify the effects at this stage, POTLL and LGPL are also concerned that the impacts on use of the NE Spit pilot boarding station will result in a need for significant additional pilot resource which is unavailable in the short to medium term. In this regard we note the requirement for pilots to undertake 4 years of training before becoming suitably qualified to undertake operations.</p>
<p>(b) Social and economic and employment effects on marine communities.</p>	<p>Please see response to 7(a) above.</p>
<p>The ExA may extend an opportunity for the Applicant, IPs and Other Persons to raise matters relevant to Shipping and Navigation topics that they consider it should examine. If such matters are raised, the Applicant will be provided with a right of reply.</p>	
<p><b>(8) Any Aviation Considerations</b></p>	
<p>The ExA will raise Air Navigation, including but not limited to:</p>	
<p>(a) Possible operational effects on Manston Airport if air services were to be resumed.</p>	<p>N/A</p>
<p>(b) Possible air navigation effects on civil and military aviation.</p>	<p>N/A</p>

<p>The ExA will extend an opportunity for the Applicant, IPs and Other Persons to raise matters relevant to these topics.</p> <p>If such matters are raised, the Applicant will be provided with a right of reply.</p>	<p>N/A</p>
<p><b>(9) Procedural Decisions (If Required)</b></p>	
<p>The ExA will review whether there is any need for procedural decisions about additional information or any other matter arising from Agenda items 2 – 7. Submissions will be sought from the Applicant and any relevant IPs or Other Persons before determining whether a decision may be required, what it might address and whether particular timescales for performance are required. If the ExA determines to make any procedural decisions it may make these decisions orally (subject to confirmation in writing) or may reserve its decisions to be made in writing after the closure of the hearing.</p>	
<p><b>(10) Review of issues and actions arising</b></p>	

To the extent that matters arise that are not addressed in any procedural decisions, the ExA will address how any actions placed on the Applicant, IPs or Other Persons are to be met and consider the approaches to be taken in further hearings, in the light of issues raised in this hearing. A written action list will be published if required

**(11)/(12) Next steps and Closure of the hearing**

**ANNEX 1**  
**PLANNING POLICY PAPER**

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

**PLANNING POLICY POSITION PAPER**

**PORT OF TILBURY LONDON LIMITED AND LONDON GATEWAY PORT LIMITED**

**SUBMITTED AT DEADLINE 3 (5 MARCH 2019)**

**1. SUMMARY**

- 1.1 This Planning Policy Position Paper is submitted jointly on behalf of Port of Tilbury London Limited (PoTLL) and London Gateway Port Limited (LGPL).
- 1.2 In particular this paper deals with:
- 1.2.1 Agenda item 3 of the Shipping, Navigation Safety and Recreational Sea Issues agenda published by the Examining Authority ("ExA") on 7 February 2019 (the Agenda), which concerned "*Policy Considerations*";
- 1.2.2 Action Point 1 of the ExA's "*ISH5: Hearing Action Points*" document published on 22 February 2019 (the Hearing Action Points) which requested under the heading of "Policy Considerations": "*All IPs to provide full and specific details of what they consider to be the important and relevant policy considerations to this case*"; and
- 1.2.3 Action Point 2 of the Hearing Action Points under the heading of "Legal Submissions" : "*written legal submissions are sought from applicant, Trinity House (THLS), the MCA and other IPs concerned with the following matters: (1) Who determines what is a sea lane for the purposes of EN3 para 2.6.61-63 – how is a sea lane recognised? What is the appropriate applicable provision of UNCLOS, if one exists? What are the consequences of this?;(2) Whether a sea lane is required to be formally charted and/or designated?; and (3) To what extent are the provisions of IMO FSA MEPC.2/Circ12/Rev.2 capable of being something that constitute part of or directly derived from the UK's membership of the IMO and hence an international obligation relevant to s104 of the PA2008?*".
- 1.3 PoTLL and LGPL consider that Vattenfall (the Applicant) has failed to properly consider relevant national policy in making its application for development consent for the Thanet Extension Offshore Wind Farm (TEOWF). The two ports therefore consider that the policy position is such that the Secretary of State should not grant development consent for the TEOWF as currently proposed.

**2. LEGISLATIVE FRAMEWORK**

- 2.1 In accordance with section 104 (decisions in cases where national policy statement has effect) of the Planning Act 2008 (our underlining):

*"(2) 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"),*



[(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009]

*(b) any local impact report (within the meaning given by section 60(3) ) submitted to the [Secretary of State] before the deadline specified in a notice under section 60(2),*

*(c) any matters prescribed in relation to development of the description to which the application relates, and*

*(d) any other matters which the [ Secretary of State ] thinks are both important and relevant to [the Secretary of State's] decision."*

2.2 As such, the two ports contend that the following should be taken into account in deciding the Application:

2.2.1 National Policy Statements (NPS) which have effect in relation to the description of development, namely:

(a) NPS EN-1 'Overarching National Policy Statement for Energy', July 2011 (EN-1); and

(b) NPS EN-3 'National Policy Statement for Renewable Energy Infrastructure', July 2011 (EN-3);

2.2.2 the appropriate marine policy documents, namely:

(a) the UK Marine Policy Statement, March 2011 (MPS);

(b) the South East Marine Plan (which is in the early stage of development with consultation on a draft plan expected in 2019); and

(c) the East Marine Plan, April 2014 which is a made marine plan in an area which borders the are of the proposed South East Marine Plan; and

2.2.3 any other matters which the Secretary of State thinks are both important and relevant to his/her decision, including:

(a) the National Policy Statement for Ports, January 2012.

### 3. **AGENDA ITEM 3**

#### ***(a) To what extent is NPS Ports applicable to the proposed development?***

3.1 LGPL and PoTLL consider that the Ports NPS is relevant to the proposed development. In deciding the Application, the Secretary of State (SoS) is entitled to have regard to "any other matters which [he/she] thinks are both important and relevant the decision" (PA 2008 s.104 (2)(d)) and as such he/she can therefore have regard to the Ports NPS if it is considered to be relevant without it having to be a "relevant national policy statement" in accordance with s.104(2)(a). The parameters in s. 104 (2)(d)) essentially act as a final catch-all which means that the SoS can take into account any other matters which he/she considers important and relevant.



- 3.2 LGPL and PoTLL contend that in the case of a development which has the potential to cause such a significant impact on the ports located on the river Thames, the Ports NPS is both important and relevant to the decision. It is particularly important to consider the Ports NPS in the context of consented and pipeline port development on the Thames and in particular:
- 3.2.1 POTLL has now (as of 20 February 2019) been granted development consent for the construction of a new port facility (known as Tilbury2) located adjacent to the existing Port of Tilbury. Tilbury2 will result in a significant increase in the total tonnage handled through the combined operation, with the Tilbury2 facility being a dedicated Ro-Ro and CMAT (Construction Materials and Aggregates Terminal). Tilbury2 will start construction when the DCO comes into force, on 13 March 2019; and
- 3.2.2 DPWLG also anticipates significant growth. In the 2018 calendar year throughput equalled approximately 1.3 million TEU (Twenty Foot Equivalent container units) per annum (equivalent to approximately 11 million tonnes of cargo) but once fully developed DPWLG will have a capacity of 3.5 million TEU per annum (which is already consented). This already represents a significant uplift on the figures considered within the NRA.
- 3.3 While the need for new port infrastructure is clearly not what is being assessed in this application, it is essential that the proposed development does not hamper the development of already consented and planned port infrastructure. The Ports NPS is written to provide the framework for decisions on proposals for new port development and it also helpfully gives background and context in respect of the strategic importance of the UK Ports industry particularly in the South East of England. Key excerpts from the Ports NPS are set out in PoTLL and LGPL's Written Representation submitted at Deadline 1 [REP1-148]) and such factors should be taken into account by the SoS when considering the potential impact of the proposed development. Generally, the Ports NPS should be considered as it sets the scene and explains the importance of the Ports sector to the UK economy and gives helpful context for the ExA and SoS.
- 3.4 The Ports NPS cannot and should not be considered as a stand alone document and it needs to be taken into account alongside the relevant shipping provisions which are outlined in the Energy NPSs (as outlined in more detail below). The strategic importance of the ports industry and the South East is well evidenced in the Ports NPS and it is vital to the UK economy that this is not disrupted by the proposed development. As an island nation, it is of utmost importance that the UK can ensure resilience and competitiveness of national ports infrastructure and the threat that the proposed development poses to this should therefore be at the forefront of the minds of the ExA and the SoS in assessing the application. Unfortunately, ports infrastructure appears to have been wilfully ignored by the Applicant as evidenced by its lack of engagement with major Thames Estuary ports in the DCO process and the absence of any assessment of economic impacts in the application documents.

***(b) Does the policy justification for the proposed TEOW development have the effect of exerting a counter-force against the 'compelling need for additional port capacity'? If so, what weight should be accorded to that effect?***

- 3.5 As set out above, PoTLL and LGPL acknowledge that the ExA for TEOWF is not examining the compelling need for port capacity. The additional and growing capacity outlined at London Gateway Port and the Port of Tilbury is already consented and therefore the more pertinent point to consider in terms of weight to be given to policy is the tests set out in the energy NPS (EN-1 and EN-3) and the MPS.



- 3.6 More generally, the policy justification for the proposed offshore wind farm does not have the effect of exerting counter-force against the '*compelling need for additional port capacity*' and cannot therefore be used to justify the safety and navigation issues caused by the proposal which could hamper the realisation of such port capacity.

**(c) Which particular provisions of NPSP might be relevant?**

- 3.7 The relevant provisions of the Ports NPS have been outlined in section 3 of PoTLL and LGPL's Deadline 1 Written Representations [REP1-148].

**(d) What weight might be accorded to them?**

- 3.8 Please see the response to (a) above.

**(e) NPS EN-1 section 5.13 addresses (inter alia) 'transport' but does not refer in specific terms to maritime navigation. Are any general principles arising from that policy applicable to this application?**

- 3.9 NPS EN-1 is clearly relevant to the proposed development by virtue of being the "Overarching National Policy Statement for Energy". The provisions of section 5.13 pertain to Traffic and Transport. This section appears to have a broad focus on landside transport (as opposed to sea transport) however PoTLL and LGPL agree that it does set out some useful general principles in respect of the proposed development.

- 3.10 In particular the following paragraphs are relevant and of note (our underlining):

*5.13.1 The transport of materials, goods and personnel to and from a development during all project phases can have a variety of impacts on the surrounding transport infrastructure and potentially on connecting transport networks, for example through increased congestion. Impacts may include economic, social and environmental effects. Environmental impacts may result particularly from increases in noise and emissions from road transport. Disturbance caused by traffic and abnormal loads generated during the construction phase will depend on the scale and type of the proposal.*

*5.13.6 A new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure and the IPC should therefore ensure that the applicant has sought to mitigate these impacts, including during the construction phase of the development. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the IPC should consider requirements to mitigate adverse impacts on transport networks arising from the development, as set out below. Applicants may also be willing to enter into planning obligations for funding infrastructure and otherwise mitigating adverse impacts.*

- 3.11 As such, it can be seen that transport impacts can be economic, social and environmental and it is crucial that an Applicant seeks to mitigate such impacts. PoTLL and LGPL do not consider that this general principle has been properly followed in respect of the current proposed development. Economic impacts have not been given consideration by the Applicant and there is therefore insufficient assessment of (and therefore insufficient mitigation provided for) any impacts caused. The only real mitigation proposed was a nominal pre-application reduction in the western boundary as set out in the NRA [APP-089] which did little to ease the concerns of the two ports.





- 3.12 LGPL and PoTLL contend that as the proposed development could result in economic and social impacts on the two ports and on the Thames Estuary in general (ultimately leading to South East regional and National impacts). The Applicant is under an obligation to assess and mitigate such impacts. The mitigation proposed by the Applicant to date is insufficient to reduce the impact on the sea transport infrastructure to acceptable levels; and it is considered that, in the absence of further assessment which informs a red line boundary (RLB) amendment, the necessary mitigation required in order to make the proposed development acceptable is a reduction in the RLB as set out in the Order Limits Plan submitted at Deadline 1 (Annex 4 to Appendix A of PoTLL and LGPL's Deadline 1 Written Representations [REP1-148]).

**(f) Are the provisions of NPS EN-1 paragraph 5.13.12 relevant?**

- 3.13 NPS EN-1 paragraph 5.13.12 states:

*"If an applicant suggests that the costs of meeting any obligations or requirements would make the proposal economically unviable this should not in itself justify the relaxation by the IPC of any obligations or requirements needed to secure the mitigation."*

- 3.14 LGPL and PoTLL would agree that this provision is relevant and that its general principle applies to the application for TEOF. Put simply: if mitigation is required then it is required and should be provided. It is not relevant to consider the costs and economic viability of the proposed development as an excuse to relax obligations and if such an approach was taken to infrastructure planning then it is easy to imagine that a plethora of environmentally damaging schemes could be consented.
- 3.15 It is highly important that the mitigation is secured first and foremost and whether or not the proposal becomes economically unviable as a result is secondary. The Applicant must comply with the relevant provisions of the Energy NPS and the MPS in constructing and operating the proposed development

**(g) In respect to NPS EN-3 paragraphs 2.6.147 to 2.6.175,**

***i. Would the proposed development 'pose unacceptable risks to navigational safety after mitigation measures have been adopted'? (2.6.147) and if so, can additional design or mitigation measures be provided to address these?***

- 3.16 LGPL and PoTLL contend that the proposed development would pose unacceptable risks to navigational safety after mitigation measures have been adopted. This is the position of a number of IPs who are involved in the examination of the proposed development. For the reasons set out in section 4 of PoTLL and LGPL's Written Summary of Case made at ISH5 (submitted at Deadline 3), there are a number of technical deficiencies in the NRA submitted with the application and as such it is not possible to fully assess navigational safety at this stage.
- 3.17 NPS EN-3 sets out:

**Safety**

*2.6.147: "to ensure safety of shipping, 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"*



- 3.18 This is a clear and unequivocal policy statement and PoTLL and LGPL contend that until navigational safety has: (1) been properly assessed; and (2) the scheme is appropriately mitigated so that it will not pose unacceptable risk to navigational safety, the scheme proposed is not consentable.

**ii. Has there been sufficient and effective engagement between the Applicant and maritime navigation interests to 'allow [the Thanet OWFE] and navigation uses of the sea to successfully co-exist' (2.6.153) and if not, what additionally needs to be done?**

- 3.19 Neither POTLL nor LGPL were included in the statutory or non-statutory pre-application consultation process. The ports first became aware of the proposals following the application for development consent, having been alerted by the PLA. This is clearly a considerably deficient level of engagement and the Applicant's approach to stakeholder engagement is not in compliance with EN-3. It clearly states at paragraph 2.6.153 that (our underlining):

*"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."*

- 3.20 As major ports located on the river Thames and therefore relying on the navigability of the Thames Estuary to function, PoTLL and LGPL are certainly "*interested parties in the navigation sector*" for the purpose of the proposed development. This lack of engagement "*early in the development phase*" of TEOWF has resulted in a proposal which conflicts with the interests of port operators on the Thames due to navigation and safety concerns not having been properly considered.

- 3.21 In terms of what needs to be done additionally and the way forward, PoTLL and LGPL note that the Applicant has engaged with the two ports since they have registered to participate in the examination. The two ports encourage such engagement and are prepared to work with the Applicant to ensure that their concerns are considered, assessed and mitigated.

**iii. Is the test in NPS EN-3 paragraph 2.6.161 met: is the proposed development likely to cause 'interference with the use of recognised sea lanes essential to international navigation' and if so, can the effect of this interference be removed by additional design or mitigation measures?**

- 3.22 Paragraph 2.6.161 provides the following statement (our underlining):

*"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."*

- 3.23 It goes on to give a definition of "*recognised sea lanes essential to international navigation*":

*"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).

- 3.24 PoTLL and LGPL consider that the definition provided is somewhat unhelpful and unclear<sup>1</sup>. Article 60 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) relates to "Artificial Islands, installations and structures in the exclusive economic zone" and 60(7) specifically states:

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

- 3.25 This is not particularly helpful in defining what a "recognised sea lane essential to international navigation" actually is and the rest of the provisions in UNCLOS do not appear to provide a definition. PoTLL and LGPL consider that the definition is intended to mean any use that would be constituted as being a use that cannot be interfered with under article 60(7). Given that paragraph (a) of the definition in 2.6.161 is unclear, it is not possible to make sense of paragraph (b).

- 3.26 We note that EN-3 paragraph 2.6.155 states:

*"Information on internationally recognised sea lanes is publicly available and this should be considered by applicants prior to undertaking assessments. The assessment should include reference to any relevant, publicly available data available on the Maritime Database."*

- 3.27 We have, however, been unable to locate such information and as far as we are aware, there is no formal definition of what constitutes a "recognised sea lane essential to international navigation". From a practical perspective and on a plain meaning reading of the phrase it is clear that given the volume of traffic passing through the inshore route, it could fall within this category. The vast ship numbers which pass through this route are outlined in more detail in section 3 of PoTLL and LGPL's Deadline 3 Representations Document<sup>2</sup>. Such ships transit from ports all over the world and we therefore consider that the policy test can be met and therefore the SoS should not grant development consent for the proposed development if he/she considers that interference with the use of the inshore route is likely to be caused by the development.

- 3.28 LGPL and PoTLL understand that the various maritime organisations involved in the examination (the Marine and Coastguard Agency, the Port of London Authority, Trinity House, etc.) intend to set out their views on what constitutes a recognised sea lane essential to international navigation in more detail. Should the ExA still require further assistance on this point following Deadline 3 then the two ports are prepared to consider this point in more detail and make additional representations.

- 3.29 In addition to paragraph 2.6.161 of EN-3, paragraphs 2.6.162 and 2.6.163 are also highly relevant.

<sup>1</sup> At ISH5 it was suggested that the reference may be erroneous – we do not consider that to be the case and would highlight that the same definition is used in section 36B of the Energy Act 2004

<sup>2</sup> Note that the ship numbers set out in that document only relate to those which visit the Port of Tilbury or London Gateway Port and therefore the overall numbers using that channel will be much greater.



3.30 Paragraph 2.6.162 sets out that (our underlining):

*"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 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. 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. 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. Such circumstances should be discussed with the MCA and the commercial shipping sector and it should be recognised that alterations might require national endorsement and international agreement and that the negotiations involved may take considerable time and do not have a guaranteed outcome.*

3.31 EN-3 does not provide a definition of "major commercial navigation routes" however we consider (without prejudice to the position above that the inshore route can fall within the category of "recognised sea lane essential to international navigation") that it is clear that the inshore route in question is at the very least a major commercial navigation route. This is evidenced by the volume of traffic which passes through it as set out in more detail in section 3 of PoTLL and LGPL's Deadline 3 Representations Document<sup>3</sup> and as evidenced by the Port of London Authority's POLARIS (Port of London River Information System) database data and AIS data. As such, the SoS should give substantial weight to the adverse effects of the impact on the inshore route.

3.32 In respect of "longer transit times", as demonstrated in PoTLL and LGPL's Written Representation submitted at Deadline 1 [REP1-148] at Annex 3 to Appendix A, the extra distance incurred in not using the inshore route is significant at 14.4nm. This is an appreciably longer transit time and the impact of this should therefore be given substantial weight.

3.33 Paragraph 2.6.163 sets out that (our underlining):

*"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). Again, 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 and such circumstances should be discussed with the MCA and the commercial shipping sector."*

3.34 PoTLL and LGPL do not consider the inshore route to be a "less strategically important shipping route" for the purpose of 2.6.163 for the reasons set out above. Indeed, if that was the view of PoTLL and LGPL (as well as the other Shipping IPs) then it is unlikely that the two ports would be so concerned as to raise this issue at examination. The onus on the Applicant therefore goes well

<sup>3</sup> As above, note that the ship numbers set out in that document only relate to those which visit the Port of Tilbury or London Gateway Port and therefore the overall numbers using that channel will be much greater.



beyond the requirement to minimise the impacts to as low as reasonably practicable.

- 3.35 Generally, the NRA fails to take into account the policy tests applying to the SoS's decision-making powers, including those in EN-3. This is a further reason why that assessment included in the application for TEOWF is deficient and needs to be carried out again.

***iv. Have sufficient steps been taken to avoid or minimise 'disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade'? If not, what additional steps can be taken? (2.6.162) (The question of residual effect needs to be dealt with in the April hearings.***

- 3.36 PoTLL and LGPL do not consider that "*minimising disruption or economic loss to the shipping and navigation industries*" is an area which the Applicant has fully considered or engaged with. This is evidenced by the lack of consultation with the major ports located on the Thames Estuary and by the lack of proper assessment of this issue in the NRA.
- 3.37 The two ports consider that the additional step which needs to be taken is for a full economic assessment of the impacts of the proposed development to be carried out by the Applicant. Without such an assessment of economic impacts, the two ports contend that the ExA and SoS will be unable to consider the effect of the proposals on the South East and wider UK port competitiveness which is critical to the regional and national economy.
- 3.38 As set out in PoTLL and LGPL's Written Summary of Case made at ISH5 (submitted at Deadline 3) in section 4, the Applicant's assessment of the future baseline is particularly deficient.

#### 4. ACTION POINT 1 – POLICY CONSIDERATIONS

- 4.1 Action point 1 of the Hearing Action Points is for:

*"All IPs to provide full and specific details of what they consider to be the important and relevant policy considerations to this case."*

- 4.2 Such points have been considered in the main body of this planning policy position paper.

#### 5. ACTION POINT 2

- 5.1 Action point 2 of the Hearing Action Points is for:

***Written legal submissions are sought from applicant, Trinity House (THLS), the MCA and other IPs concerned with the following matters:***

***Who determines what is a sea lane for the purposes of EN3 para 2.6.61-63 – how is a sea lane recognised? What is the appropriate applicable provision of UNCLOS, if one exists? What are the consequences of this?***

- 5.2 Please see the response set out at in response to Agenda Item 3(iii) above.

***- Whether a sea lane is required to be formally charted and/or designated?***



- 5.3 At this stage, the two ports defer to the various maritime organisations involved in the examination (the Marine and Coastguard Agency, The Port of London Authority, Trinity House etc.) in respect of this question.

**- To what extent are the provisions of IMO FSA MEPC.2/Circ12/Rev.2 capable of being something that constitute part of or directly derived from the UK's membership of the IMO and hence an international obligation relevant to s104 of the PA08.**

- 5.4 As is well established under the Planning Act 2008, in deciding the Application, the SoS must be satisfied that deciding the application in accordance with any relevant national policy statement would not lead to the UK being in breach of any of its international obligations.

- 5.5 The IMO is the United Nations specialised agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships.

- 5.6 PoTLL and LGPL agree that the use of the IMO Formal Safety Assessment in the NRA is not inappropriate and do not consider that it conflicts with the provisions of the NPS or MPS. The NPS and MPS must still therefore be complied with as set out above.

## 6. MARINE POLICY

- 6.1 In addition, to the various NPS provisions which have been outlined in more detail above, in accordance with section 104(2)(aa) of the Planning Act 2008:

*"in deciding the application the [Secretary of State] must have regard to the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009"*

- 6.2 The UK Marine Policy Statement is therefore relevant and needs to be taken into consideration when determining the application. The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment and contributes to the achievement of sustainable development in the United Kingdom marine area. The Department for Environment, Food and Rural Affairs (DEFRA) has agreed eleven marine plan areas with the aim of completing marine plans by 2021.

- 6.3 The South East Marine Plan (which covers the area in which the Thanet Extension is situated) is in the early stages of development, with consultation on a draft plan expected in 2019. The Draft South East Marine Plan Iteration 3 (3 January 2019) – is currently open to public engagement (until the end of March). The Draft South East Marine Plan is therefore afforded lesser weight in policy terms at this early stage of its development and it is therefore necessary to consider the East Marine Plan (the area of which borders the South East Marine Plan area) which is considered as the most appropriate reference point. A number of the draft policies of the South East Marine Plan align with the made policies of the East Marine Plan. Using the East Marine Plan is also the approach which the Applicant has correctly applied to marine policy as set out in Policy and Legislation - Environmental Statement Volume 1 Chapter 2 [APP-037] (see paragraphs 2.5.6-2.5.7).

- 6.4 The UK Marine Policy Statement broadly sets out at paragraph 3.4.7 in respect of Ports and Shipping that (our underlining):



"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. Marine Plan development and individual decisions should also take account of environmental, social and economic effects and be in compliance with international maritime law. Marine plan authorities will also need to take account of the need to protect the efficiency and resilience of continuing port operations, as well as further port development.

- 6.5 Of note is:
- 6.5.1 the requirements to seek to minimise any negative impacts on shipping activity;
  - 6.5.2 the fact that environmental, social and economic effects must be taken into account; and
  - 6.5.3 the need to protect the efficiency and resilience of continuing port operations.
- 6.6 PoTLL and LGPL do not consider that the above points have been properly taken into consideration in the assessment of the impacts of the proposed development.
- 6.7 Marine Plans, together with the Marine Policy Statement, underpin the planning system for England's seas. The East Inshore and East Offshore Marine Plans (April 2014) contain a number of provisions of note which are significant in the context of the proposed development. We have extracted the following salient provisions (our underlining):

*Paragraph 344: "In the East marine plan areas there are increasing levels of activity encroaching on navigable space (for example, offshore wind farms), making it ever more important to indicate the area essential for navigation so that this is considered from the outset by public authorities and applicants. The East Inshore Plan Area is home to a number of ports that are of national strategic importance to the United Kingdom and these ports, as well as the importers and exporters that rely upon them, need safe navigational access to remain available with capacity to accommodate growth."*

*Paragraph 349: "It is clear that the most considerable change in use in the East marine plan areas over the next 20 years will be the development of offshore wind farms (Offshore Wind Farms). Shipping is unable to co-locate with Offshore Wind Farms without appropriate consideration and negotiation. Discussions take place between mariners, their agencies and Offshore Wind Farm developers to ensure navigational safety whilst meeting development targets. Changes to shipping activity are likely as a result of fully developed Offshore Wind Farm zones and particularly so in the case of Round 2 (and related extensions) and Round 3 wind farm zone projects due to their size and locations."*

*"Policy PS1 - Proposals that require static sea surface infrastructure or that significantly reduce under-keel clearance should not be authorised in International Maritime Organization designated routes."*

*Paragraph 353: " The Marine Policy Statement states that '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' (Marine Policy Statement 3.4.7 and 2.3.1.1). The National Policy Statement (S 2.6.161) for Renewable Energy Infrastructure states that a Nationally Significant Infrastructure Projects should not be '... grant[ed] development consent in relation to the construction or extension of an offshore wind farm... [if] interference with the use of recognised sea lanes essential to international navigation is likely to be caused by the development."

"Policy PS2 - Proposals that require static sea surface infrastructure that encroaches upon important navigation routes (see figure 18) should not be authorised unless there are exceptional circumstances. Proposals should:

- a) be compatible with the need to maintain space for safe navigation, avoiding adverse economic impact
- b) anticipate and provide for future safe navigational requirements where evidence and/or stakeholder input allows and
- c) account for impacts upon navigation in-combination with other existing and proposed activities"

"Policy PS3- Proposals should demonstrate, in order of preference:

- a) that they will not interfere with current activity and future opportunity for expansion of ports and harbours
- b) how, if the proposal may interfere with current activity and future opportunities for expansion, they will minimise this
- c) how, if the interference cannot be minimised, it will be mitigated
- d) the case for proceeding if it is not possible to minimise or mitigate the interference"

Paragraph 367: "This policy gives effect to the need to minimise negative impacts on shipping activity, freedom of navigation and navigational safety, as well as protecting the efficiency and resilience of continuing port operations, and further port development. It also complements the National Policy Statement for Ports, setting the provisions in place for port growth in the context of the management and development of other activities."

- 6.8 PoTLL and LGPL do not consider that PS1, PS2 and PS3 or the extracts above generally have been properly taken into consideration by the Applicant. Potential negative impacts on shipping and in particular those which relate to economic impacts have not been given due consideration in key application documents. For ports, policy PS3 is highly relevant. There is a clear statement that the proposals should demonstrate that that they will not interfere with current activity and future opportunity for expansion of ports and harbours. As set out above, the opportunities for expansion at the Port of Tilbury and London Gateway Port are immense and also tangible being already consented. The Applicant has failed to account for such growth. Instead, the Applicant has nominally allowed for 10% growth in the NRA. As set out in more detail in PoTLL and LGPL's Written Summary of Case made at ISH5 (submitted at Deadline 3), this is woefully insufficient in the context of the Thames Estuary and the two ports alone. The Applicant has not (and could not based on its own





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assessment) adequately minimised or mitigated impacts on the current, and future expansion of, Thames Estuary ports.

- 6.9 The efficiency and resilience of continuing port operations, as well as further port development, would be materially compromised by the TEOWF, as currently applied for, if consented. This is not in accordance with the MPS policy.