

**INFRASTRUCTURE PLANNING**  
**THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010**  
**THE THANET EXTENSION OFFSHORE WIND FARM ORDER**

---

**Summary of Oral Submissions made at ISH8 submitted on behalf of the Port of  
London Authority and Estuary Services Limited**  
(Rule 8 letter 18 December 2018)

---

Unique Reference Number	EN010084
Document Ref.	PLA 16/ ESL 16
Author	Winckworth Sherwood LLP
Date	29 April 2019

---

Minerva House  
5 Montague Close  
London  
SE1 9BB  
DX: 156810 London Bridge 6

T 020 7593 5000  
F 020 7593 5099

[www.wslaw.co.uk](http://www.wslaw.co.uk)

---

**Winckworth**  
Sherwood

**Solicitors and  
Parliamentary Agents**

## **1. Introduction**

1.1 This document contains a summary of the oral representations made by both the Port of London Authority (“the PLA”) and Estuary Services Limited (“ESL”) at ISH8 on Shipping, Navigation and Maritime Safety (“ISH8”).

### 1.2 Structure

1.2.1 The structure of this summary will reflect how the Agenda for ISH8, as provided as Appendix A to the Examining Authority’s (“ExA”) letter dated 9 April 2019, was followed during the hearings held across 16 and 17 April 2019.

Section 1 – Introduction

Section 2 – Procedural Implications of Submissions at Deadline 3, 4, 4B and 4C

Section 3 – Applicant’s Substantive Position Shipping, Navigation and Maritime Safety post ISH5 and responses by IPs and Ops

Section 4 – Policy considerations

Section 5 – Effects on Navigation in the approaches to Thames and Medway Ports

Section 6 – Detailed Considerations: Navigational Risk Assessment (NRA)

## **2. Procedural Implications of Submissions at Deadline 3, 4, 4B and 4C**

2.1 Ms Dillistone explained on behalf of the PLA and ESL that they were grateful to the ExA for recognising the time pressures that IPs were under given the short period available to review the documents submitted by the Applicant in relation to the SEZ Material Change.

2.2 In light of the limited number of days available for review of the Applicant’s latest submissions, it had not been possible for the PLA and ESL to carry out a full review all of the documents submitted. Nevertheless, even from an initial review there did not seem to be sufficient information to address the concerns of the PLA or ESL about geographical issues. The documents included insufficient detail about the timings of exclusions from the SEZ or the specific activities which would be excluded.

2.3 Counsel for the Applicant had stated that one reason for the late submission was the need to hold the HazID Workshop prior to submission. Ms Dillistone pointed out that the HazID Workshop was originally going to be held on 2 April and was brought forward at the PLA’s suggestion to 29 March. In any event, it would have taken place after the relevant deadline.

2.4 Ms Dillistone then gave a brief overview of the PLA and ESL’s views on the HazID Workshop. She explained that limited progress was made on the day and the attendees did not manage to get through all relevant matters. As such there was limited time for IPs to feed into the revised NRA. ESL and the PLA did not consider that there was agreement as to the outputs of the HazID Workshop.

**3. Substantive Position Shipping, Navigation and Maritime Safety**

- 3.1 Agenda Item 3 sought IPs' views on the SEZ Material Change proposal put forward by the Applicant as well as other matters raised in ISH5. The ExA invited the IPs to identify matters still considered to be in contention with the Applicant.
- 3.2 Ms Dillistone identified the main outstanding matters as being the Applicant's SEZ proposals and the NRA.
- 3.3 She concurred with the views put forward by Mr Owen on behalf of the Port of Tilbury London Limited ("PoTLL") and DP World London Gateway ("DPWLG") regarding the inadequacy of the Applicant's approach to future growth proposals. The Applicant has said that a predicted 10% increase of 10% can be reflected in a 10% increase in the overall risk. However, this only allows for a single increase, not 10% year on year. Additionally, the NRA does not adequately deal with the issue of congestion. The NRA does not sufficiently recognise the peaks and troughs in traffic density.
- 3.4 Ms Dillistone agreed that the SEZ could potentially give comfort on vessel transits. However, the PLA and ESL remain unconvinced that there is sufficient room for pilot boarding and landing. As with other IPs, the PLA and ESL's view was that a real time pilotage study was required and that deferring that until after the application stage would be incorrect. ESL and the PLA would argue that it needs to be completed before the Secretary of State makes his decision.
- 3.5 Ms Dillistone then took the opportunity to address some comments made by counsel for the Applicant during his submission on this Agenda Item. She wished to clarify his point that the PLA and ESL had "rowed back" from agreement after the HazID Workshop. The IPs taking part had not been allowed to see the scores during or after the workshop. ESL and the PLA had both raised issues on the day. They also stated during the telephone conference on Tuesday 2 April that they were reviewing their position. This does not mean there was a "rowing back"; it was simply consideration that was required after the Workshop because of the slow progress that was made on the day.
- 3.6 In response to a question from the ExA, Cathryn Spain for the PLA, agreed that one concern was that they were asked to input scores but they did not get to see the full processing of them. Therefore, there was no opportunity to reflect on the process. She said that she understood the general position that participants were not meant to see outputs because this could influence their future scoring. However, the Applicant did have access to that information and had an understanding of what individual input scores meant for the outcomes. This was a one-sided approach and in the PLA's view it would have been appropriate for the workshop to have been independently led.
- 3.7 She explained that the general position of not knowing the specifics made sense. However, she would argue that it was necessary to have some benchmarking in order to understand if the scores were in the correct sort of area. She also expressed some concerns about the IPs attending not having a good understanding of the complex algorithms being used.
- 3.8 Ms Spain explained that there was a lot of pressure to complete as many scores as possible on the day. This meant that there was little time for discussions which would have bridged the gap between quantitative and qualitative assessment. This is what she considered that these sorts of workshop should be for.
- 3.9 Counsel for the Applicant then raised a query about the area over which the PLA and ESL were requesting the 2nm working area plus 1nm buffer area. Richard Jackson

answered this on behalf of the PLA and ESL. He explained that the diagram included as Figure 15 in the NRA Addendum ("NRAA") was drawn up from ESL's log books. When a pilotage operation takes place, those who took part will indicate the approximate area in which it took place. They do not accurately pinpoint locations and the boundaries in the figure are not fixed.

- 3.10 Mr Jackson explained that ESL currently operate with a flexibility that they need to retain in order to provide a safe and efficient service. Although 5000 plus pilotage operations were carried out in the central area, and a lower amount were served to the North and South, these other pilotage operations were not immaterial. They are part of the flexibility of providing a one launch service and it should be considered why vessels were served at alternative locations.
- 3.11 He explained that although the SEZ does provide a 2nm working area plus 1nm buffer in some place, ESL considered that this formed a corridor rather than the area extending down to Elbow. ESL would like to be able to continue their operations using the whole area between the NE Spit and the Wind Farm and Elbow buoy and the Wind Farm.
- 3.12 In response to a question by the ExA, Mr Jackson explained that the reason ESL is looking to maintain the sea room is in order to factor in a day when they have to deal with multiple vessels. The length of the vessel will not necessarily dictate the amount of sea room it will need. It is always necessary to maintain a sensible amount of sea room for whatever could cause you a problem. This could include the weather, fog, traffic, fishing vessels or a deficient ladder. The 2nm of working space ESL reference in the submissions is to enable them to handle these situations. It is not just required for a particularly large ship which might only be needed 10 times in a year.
- 3.13 Mr Jackson expressed concern that the Applicant is treating turning circles as an absolute figure. This is incorrect, they do not relate to a ship turning in bad weather, for example.
- 3.14 The problem with the existing SEZ proposal is that the central line by the Diamond has an area of 2nm plus 1nm of sea room. However, this means that half of all vessels would have to pass to one side and half to the other which is not what will happen in reality.
- 3.15 Ms Spain reinforced Mr Jackson's concerns about the weather. She said that it can be seen from pilot logs that weather is a significant factor in the location of pilotage operations. Increased numbers of operations take place to the South in heavy weather because the Elbow buoy provides more shelter.

#### **4. Policy considerations**

##### **4.1 (a) To which if any routes approaching London and Sheerness ports does the definition of '...recognized sea lanes essential to international navigation...' apply, with reference to UNCLOS 1967; and could the proposed TEOW development cause interference with their use (2.6.161)?**

4.1.1 The PLA and ESL's submissions on this point reflect those made at earlier Deadlines and hearings and are in accordance with those made by PoTLL and DPWLG.

##### **4.2 (b) Has site selection (or definition) 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’ (2.6.162) and if not, what adverse effects can be quantified and presented in evidence, or what reorganisation of traffic activity might be effected to mitigate disruption or economic loss?**

4.2.1 Ms Dillistone made the point that, although the PLA and ESL could not know the Applicant’s thoughts when selecting the site, it is difficult to see how site selection could have been undertaken without knowledge of the economic impacts – in particular those on ESL due to the increased times of pilotage transfers.

**4.3 (c) Has the Applicant taken sufficient measures to ‘minimise negative impacts to as low as reasonably practicable (ALARP)’ and if not, what additional measures could be implemented (2.6.163)?**

4.3.1 Most IPs concurred with their previous comments on this point. Mr Jackson reiterated that this was an area that was still in need of further discussion, but that as per previous submissions, ESL and the PLA has not seen sufficient evidence to demonstrate that the negative impacts have been reduced to ALARP.

**4.4 (d) Are there sufficient ‘significant concerns over the frequency or consequences of [such] incidents [that] a full Search and Rescue Response Assessment is ‘required before the application can be determined’ (2.6.164)**

4.4.1 The PLA and ESL did not add further comments on this Item.

**4.5 (e) Would the proposed development ‘pose unacceptable risks to navigational safety after mitigation measures have been adopted’? (2.6.165) and if that is considered by regulators to be the case with present proposals, could additional design or risk controls/mitigation measures be implemented to make risks acceptable?**

4.5.1 Ms Dillistone pointed out the PLA and ESL do not yet fully understand what all of the risks are. Therefore it is not possible to know what mitigation measures would be required. Based on what is currently on the table, there are outstanding risks to navigation. These are uncertain and, therefore, the PLA and ESL cannot say with any certainty that they are acceptable.

**4.6 (f) Has the scheme been ‘designed to minimise [the] effects on recreational craft and that appropriate mitigation measures, such as buffer areas ...allow for recreational use outside of commercial shipping routes’ (2.6.166)?**

4.6.1 The PLA and ESL had no further representations to make on this issue.]

**4.7 (g) Are mitigation measures possible to ‘negate or reduce effects on navigation to a level sufficient to enable the [Secretary of State] to grant consent’ (2.6.167)?**

4.7.1 The IPs were in agreement that their responses to this was unchanged.

**4.8 (h) What is the ‘extent and nature of any obstruction or danger to navigation, which, (without amounting to interference with the use of [such] sea lanes)...likely to be caused by the development’ (2.6.168 and 2.6.161) with regard both to ‘the overall effect of development in question and to any cumulative effects of other relevant proposed, consented and operational offshore wind farms’ (2.6.169)?**

- 4.8.1 Mr Jackson built on the submissions by the London Pilot Council to explain that the nature of any obstruction or danger to navigation is as a result of the increase in traffic coming together. The reduction in sea room means the same amount of traffic in the smaller area.
- 4.8.2 Additionally, Mr Jackson raised that insufficient weight is being given to the issue of interference with radar.

**4.9 (i) Has engagement between the Applicant and maritime navigation stakeholders ensured that solutions have been sought 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?**

- 4.9.1 The PLA and ESL did not raise any new points on this matter.

**4.10 Has the Navigation Risk Assessment (NRA) identified and assessed cumulative and in-combination risks associated with the development and other developments in the Thames Estuary and its approaches (2.6.157)?**

- 4.10.1 The PLA and ESL did not raise any points on this matter.

**5. Effects on Navigation in the approaches to Thames and Medway Ports**

- 5.1 Mr Jackson gave a statement covering the various issues in this Agenda Item and covered the following points.
- 5.2 Whilst there is sufficient sea room for a vessel on passage between Elbow and the SEZ, there is not safe sea room for boarding and landing in this area. In ESL and the PLA’s view, larger vessels (and this is not purely characterised by length but also air-draft) will be greatly deterred from using the inshore route, particularly in unfavourable met-ocean conditions. This would also be the issue with the remaining distance between the NE Spit buoy and the SEZ; the reduction in sea room will reduce ESL’s ability to ship and land pilots in this area and have a significant impact on any ‘room for error’ with shipping approaching or leaving the boarding area.
- 5.3 Taking into account the North East Spit bank itself and the Margate Roads anchorage the recommended 2nm+1nm buffer should not be considered as a single ‘strip’ running across the charted boarding position. The nature of shipping and landing pilots requires great flexibility. The inner boarding ground has a highly diverse range of vessel types crossing it on all states of tide, at all times of day. ESL has clearly stated that it does not consider it safe to ‘handle’ vessels requiring a pilot within 1nm of the SEZ/TOWE. There should be an extension of the 2nm+1nm buffer along the entirety of the western boundary not just a central ‘strip’ running across the inner boarding position.
- 5.4 The simulator focused on the inner boarding position as a focal point for boarding and landing and ESL and the PLA would still question the validity of this as ‘proof’ that all shipping and landing can therefore be conducted in such a specific area. They do not consider 14 runs, with one marginal, to be sufficient when assessing the wider impacts on the boarding area. As suggested in the MCA’s Offshore Renewable Energy Installations methodology guidance document, human error/rule violations should be a consideration when assessing an area through simulation. This was not part of the simulator study.
- 5.5 The PLA and ESL still believe that the TOWE/SEZ will have a negative impact on a Master’s decision to use the inshore route. Factors such as visual impact, radar

implications, surrounding traffic, met ocean conditions (particularly poor visibility) and time of day (for example) will have a heightened consequence for a Master when deciding which route to transit as a result of the increase in TOW footprint. Both approaches (Elbow and NE Spit) will be negatively impacted but the PLA and ESL consider that this will be more significant at the southern Elbow approach, the route with the greatest reduction in sea room.

- 5.6 The additional one hours' steaming time suggested by the Applicant would be the minimum additional steaming time for a vessel avoiding the inshore route at Elbow buoy. This delay would be increased by poor met ocean conditions and the loss of the lee afforded the inshore route by its close proximity to the coast compared to the diversion route to the east of TEOWF.

## **6. Detailed Considerations: Navigational Risk Assessment (NRA)**

- 6.1 Ms Spain gave a statement covering the various issues in this Agenda Item and covered the following points.
- 6.2 Ms Spain explained that it was difficult to assess the extent of the reduction in navigational risks as a result of the SEZ because the NRA and NRAA were not directly comparable. The PLA and ESL still do not know what the SEZ means and what may or may not be permitted in it.
- 6.3 Ms Spain raised further concerns about the HazID Workshop and previous engagement on the SEZ. She stated that as far as she was aware the Applicant had made no changes to risk scores as a result of the concerns raised by a number of IPs.
- 6.4 In response to a question asked by the ExA, Ms Spain explained that as an organisation the PLA had moved away from the kind of scored risk assessment used here. Instead there is more of a focus on participants in workshops being happy that hazards have been identified and mitigated. Although scored lists might be produced, this is not the starting point.
- 6.5 Further Ms Spain reinforced earlier concerns about time pressures and the procedures of the workshop. It was facilitated by Marico Marine who had access to data that the participants did not.
- 6.6 Ms Spain reiterated the PLA and ESL's concerns about future growth over the lifetime of the scheme not having been properly considered. She also raised that there was confusion over some of the processes being used by the participants. When considering a collision with a Class 1 or 2 vessel participants were only expected to score the outcome to the Class 1 or 2 vessel and not the outcome to the vessel with which it collided. Therefore, for each risk score where two vessels collided, only the likelihood and consequence to one of the vessels in collision was taken into consideration, rather than the outcome as a whole, thus reducing the outcome risk score.
- 6.7 Due to the way in which the outcome risk scores are calculated, as a combination of most likely and worst credible, it is possible to have a most credible outcome where the likelihood is increased by 50% for example going from 1 in 36 years to 1 in 18 years, but because the worst credible outcome is so unlikely the overall combined score is deemed to be in the ALARP region. The most likely outcome of two Class 1 or 2 vessels colliding may still be significant and there in the PLA and ESL's view it cannot be considered that the risk is ALARP, nor is it acceptable that the risk of collision has increased from 1 in 36 to 1 in 18 years

- 6.8 Counsel for the Applicant then undertook cross examination of Ms Spain.
- 6.9 Following the workshop the PLA and ESL reflected on the risk scores and in light of their combined practical experience considered that some of the likelihood and consequence scores were too low. The PLA undertook a review of the first 4 scores for collision that were completed at the workshop and reviewed Marico's scores for the additional 14 hazards that were not assessed at the workshop. The PLA then produced a scored risk assessment, using the same methodology, so that the scores could be compared. However, the consequence likelihood scoring used a 5x5 matrix, rather than applying Marico's algorithms. This assessment was not intended to be a stand-alone NRA, but was submitted as an outline draft (noting the limited time available to IPs to comment) to demonstrate where the PLA did not agree with the scoring of the risk assessment workshop. Counsel for the Applicant also raised queries about the existing implication of risk controls by the PLA. Please see the PLA and ESL's response to action point 7 on this.

**Winckworth Sherwood LLP**  
**Solicitors and Parliamentary Agents**  
**On behalf of the Port of London Authority and Estuary Services Limited**  
**29 April 2019**