



Pinsent Masons

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

DEADLINE 7 REPRESENTATIONS

OF

PORT OF TILBURY LONDON LIMITED AND LONDON GATEWAY PORT LIMITED

6 JUNE 2019

1. SUMMARY

1.1 This document is the joint Deadline 7 Representation of Port of Tilbury London Limited (PoTLL) and London Gateway Port Limited (LGPL) (the Ports). In summary, this documents covers:

- (a) a response to the Applicant's Deadline 6 submissions in Section 2;
- (b) comments on responses to the Examining Authority's Third Suite of Written Questions in Section 3;
- (c) comments on the responses to the Examining Authority's DCO commentary in Section 4; and
- (d) final overall submissions and closing remarks in Section 5.

2. RESPONSE TO THE APPLICANT'S DEADLINE 6 SUBMISSIONS

2.1 Table 1 below sets out a brief response to the submissions of the Applicant made at Deadline 6. The Ports have responded to specific remarks/excerpts from the Applicant's submissions where necessary. Full DCO Examination Library references are provided below for ease of reference.



2.2 **Table 1:**

Document Reference	Document Title	Page/Para. Reference	Applicant's Representation excerpt	POTLL/LGPL Response
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 5, paragraph 3	<p>Much of the POTLL and DPWLG criticism of the TEOW application focusses on two issues which have been highlighted during the ISH:</p> <ul style="list-style-type: none"> - Lack of consultation – the Applicant has not accepted that there has been a lack of consultation given the wide extent of discussions with bodies including the MCA, Trinity House and the PLA as harbour authority. Further, consultation has continued throughout the examination process and this is not addressed in the HRW report; and - The view that the 10% future uplift to vessel traffic passing the TEOW is not representative of POTLL and DPWLG trade forecasts – although no details on what should be used as a future uplift is provided and limited evidence is provided that 10% is too low, beyond identifying the proposed increase in trade at POTLL and DPWLG, a proportion of which may use the inshore route. 	<p>The characterisation by the Applicant of the main criticisms of the proposed TEOWF made by the Ports is incorrect.</p> <p>The Ports would characterise the main issues between the parties as: (a) the lack of assessment of available sea space for pilot boarding and concurrent boarding/transit activities; and (b) the lack of assessment of economic impact of the Scheme.</p> <p>The issues above have been consistently advanced by the Ports throughout the Examination and a summary of issues of disagreement between the parties is included in the Statement of Common Ground concluded between the Ports and the Applicant [REP6-106].</p> <p>While the Ports consider the lack of consultation with the Ports to have been incorrect and contrary to policy, it is not one of the key issues on which the Ports have been focusing their criticism of the Application.</p>



Document Reference	Document Title	Page/Para. Reference	Applicant's Representation excerpt	POTLL/LGPL Response
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 5, paragraph 7	In terms of ship arrivals the increase in London is largely balanced by the decline in Medway	<p>The Ports do not agree with this statement.</p> <p>Table 4.1 of the HRW report [REP4C-016] shows that between 2009 and 2017 there was a decline at Medway of approx. 250 container vessel calls but an increase in the Port of London of approx. 800 container vessels. Taking Medway into account, that represents a net increase of approx. 550.</p> <p>Table 4.1 demonstrates that in 2009 the combined number of vessel calls to London and Medway (the only two ports that influence the inshore route) was approximately 1,600. This increased (by approximately 550) to approximately 2,150 vessel calls in 2017. This represents a 34% increase in an 8 year period.</p>
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 7, paragraph 8	The report notes that POTLL is likely to receive larger vessels of 10,000-11,000 TEU and from reference to the report table 7.6 relates to vessels of around 333m, which will have a draught of greater than 7.5m and therefore should transit into / out of the port via the SUNK pilot boarding area and the Black Deep	This is not correct. It has been demonstrated that vessels with a draft of up to 11.6m can transit the Princes Channel (see Table 5.2 of the HRW report which provides chart depths of certain channels).
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 7, paragraph 9	The report at Section 4.3 shows that RO-RO arrivals to London have declined since 2011	<p>The Ports consider that the reference to 2011 made by the Applicant is misleading.</p> <p>Figure 4.2 (referenced in Section 4.3 of the HRW Report) provides data from 2009 to 2017.</p>



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				The year 2011 happens to represent a peak in the data and thus when compared with 2017 levels represents a reduction. However, a comparison of 2013 to 2017 levels would show a slight increase. The Ports consider that the Applicant is being selective with data in order to advance its case.
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 7, paragraph 10	At Section 4.4 analysis shows (Figure 4,3) a general decline in Ship Arrivals at London & Medway ports from a peak in 2003 to 2005 – this corresponds to similar findings in the NRA Addendum, and when correlated with an increase in trade shows the propensity for larger vessels to service London and to a lesser extent Medway ports	The Ports do not agree with this statement and wish to highlight that Figure 4.3 shows a small decline in carriers but not a decline in all vessels.
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 7, paragraph 14	At Section 6.1 it is noted that the use of the NE Spit pilot boarding station is preferred by the PLA / ESL as it is a shorter pilot boat transfer from base compared to the Tongue pilot boarding station, in addition to be being less exposed. No mention is made of the NE Goodwin pilot boarding station located to the south of the existing TOW . It is the case that as the PLA / ESL do not differentiate their charging between different areas of the NE Spit boarding area and as such it economically advantageous to board vessels at the NE Spit diamond than	The use of the NE Goodwin for pilot boarding is quantified in Table 7.5 and 8.10 of the HRW Report but it is largely inconsequential for the Ports given that it is used for approximately 13 pilot transfers per annum which equates to less than 1% of all pilot transfers for vessels bound for the Ports.



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			the Tongue diamond, even if they are deep draught vessels.	
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 11, paragraph 17	It is apparent from Section 7.1, 7.2, 7.3 and 7.4 that container ship "geometric" size within North Europe and particularly within DPWLG is set to increase. Whilst a further three operational berths are yet to be developed at DPWLG, the report at 7.2.2 states it is difficult to predict "with any precision" future growth in vessel numbers for DPWLG, albeit the cargo volumes are likely to increase. As noted above with larger vessels comes larger cargo volumes, so it is likely that there is no increase in ship arrivals, but an increase in the volume of containers handled	<p>The trend for larger vessels may be correct for organic growth however this is not considered to be representative of areas where new port infrastructure has or will become available at a later date.</p> <p>The Ports refer to the ratio of growth in volume to growth in vessels of 0.69 which was evidenced by Table 1 of their Deadline 2 Representations (REP2-050) and discussed in their Deadline 6 representations in response to EXQ 3.12.15(d).</p>
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 11, paragraph 18	Further analysis can be undertaken to demonstrate the move towards larger vessels and that increases in trade especially for London Gateway, is not likely to mean an increase in ship arrivals – the plots below show total volumes of loaded TEU (containers) handled at Felixstowe, London and Southampton – this shows an increase in trade for Felixstowe despite, a reduction in ship arrivals, when benchmarked to HRW Figure 4.1 (also presented below).	<p>Please see the response above in respect of ship arrivals.</p> <p>In respect of London ports there is projected to be a large increase in container ship calls as shown in Figure 4.1 of the HRW Report. This is primarily due to the growth as a result of new port infrastructure at DPWLG and it is noted that significant additional infrastructure is consented and planned at both LGP and Tilbury 2 (and in the latter case now under construction).</p>



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[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 11, paragraph 20	The ramp up of container ship arrivals for London, between 2013 and 2017 is likely primarily due to the build-up of ship arrivals at London Gateway following construction. As noted the transfer rate of TEU per ship arrival in London has the lowest number of the three main container ports in the UK. This is likely driven by two factors: (1) POTLL is predominantly a feeder container port, and (2) DPWLG is a new port and is building its customer base.	The Ports agree that the ramp up of container ship arrivals for London, between 2013 and 2017 is likely to be primarily due to the build-up of ship arrivals at London Gateway following construction. The Ports would, however, point to the significant additional construction due to take place/taking place at LGP and at Tilbury 2 respectively, which means that further growth is anticipated.
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 14, paragraph 30	In summary the data and analysis presented in relation to DPWLG and use of the inshore route does not demonstrate that the 10% future uplift provided by the Applicant in the NRA A is under-representative, and neither does it provide evidence of larger vessel usage of the inshore route. It does however confirm the very low usage of the inshore route by London Gateway-bound vessels, the vast majority (in excess of 90%) of which are vessels less than 250m in length	This is not correct, Table 7.3 of the HRW Report demonstrates that there are a number of large container vessels which transit through the inshore route. It is to be noted that these vessels have drafts of up to 14.1m (see - www.marinetraffic.com).
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 14, paragraph 31	Section 8.1.1 primarily gives either the maximum dimensions of vessels that the POTLL is able to accommodate, or the largest vessels that have arrived at the port. It is not clear from the statements presented how these vessels transited to from the port – i.e.	How such vessels transited to or from the port is set out in Tables 8.2 to 8.9 of the HRW Report.



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			did they pass the existing TOW?	
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 15, Paragraph 32	The Tilbury 2 development is stated as a RO-RO terminal and CMAT (Construction Materials and Aggregates Terminal). No – no details are provided on future traffic profiles for the Tilbury 2, or the likelihood that its development will likely take vessels currently bound for the impounded Tilbury docks (as vessels would not need to transit the lock, which is restricted for large vessel to high water periods only). The Applicant notes that the Tilbury2 shipping and navigation assessment does assume it will result in a 10% increase in vessels at Gravesend and that, given the information provided at the accompanied site inspection, a significant proportion of the CMAT vessel traffic will be transiting up the Thames to service construction projects within the Thames Estuary. This does not however represent a 10% increase in vicinity of TEOW and particularly the inshore route	As set out in the Ports' Deadline 6 Representations, the Tilbury2 Environmental Statement indicates that based on 2016/17 data there will be an increase in vessel movements in the Thames Estuary of up to 10% as a result of the development of Tilbury2.
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 17, Paragraph 45	The report however states that any potential impact, would be "because encounters between ships on passage and ships engaged in pilotage transfer operations may take place in a more confined area" – however no analysis	The Ports highlight that the provision of such analysis or modelling is the responsibility of the Applicant and it is the lack of such modelling and other assessment of impacts that means the impacts cannot be understood fully by IPs,



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			or modelling is provided to document this statement or finding, and the Applicant notes the caveat of may potentially be affected is used	the ExA and ultimately, the Secretary of State.
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 17, Paragraph 47	The Applicant does not consider the need for any vessel to be deviated as a result of the TEOW for reasons laid out previously and above related to searoom calculations. Notwithstanding this, it is noted however that within Section 11 no definitive details are provided on the extent of any deviations by vessels. Analysis presented in Table 11.1 and 11.2 is not referenced within the text and it is not clear the methodological basis for the analysis they contain or what the tables are conveying to the reader - as such these tables are not reviewed.	Because the Applicant has provided insufficient assessment in order to inform the conclusions outlined, the Ports contend that a further Pilot simulation study is still required.
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 18, Paragraph 48	Table 11.3 is provided as it gives service speeds for vessels, and a statement is made that ship service speed is an indicator of vessels willingness to take routes that save time. Whilst this is generally the case for vessels on oceanic passages, many of the deep sea container vessels transiting to / from POTLL and DPWLG also stop at other western European ports. It is evident within the Applicant's Statement of Evidence (REP4C-004) that many vessels, even with high service speeds, frequently	The HR Wallingford Report makes no such statement in respect of willingness to take routes which save time. The report suggests the importance of routes that save time to some vessels however it does not comment on their willingness to use such routes.



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			wait prior to transiting into the Thames Estuary, presumably due to berth, pilot or water depth restrictions, and therefore the Applicant does not agree that service speed is a good indicator of a vessels propensity to absorb delays.	
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 18, Paragraph 50	<p>At Section 11.4 it is stated that navigation simulation studies are required to be completed to enable the threshold for a particular operation to be identified that would necessitate a vessel deviating to the west of the TEOW. The Applicant does not consider there is a need for additional navigation simulation studies as:</p> <ul style="list-style-type: none"> · NRA A found navigation risk to be ALARP or Lower with the SEZ in place · SEZ searoom requirements were derived from POTLL / DWPLG supplied guidance and the inshore route exceeds these guidance requirements, including an allowance for factors including variations in metocean conditions and complexities in traffic movements 	<p>As set out in some detail in their past representations, the Ports disagree –and consider that there is a need for the additional simulation study.</p> <p>As is demonstrated by the Applicant's shipping commercial assessment (Annex C to Appendix 16) [REP6-020], the risks to stakeholders are at least consequence category 3 (when diverted transits and additional occasions when a vessel cannot take a pilot are considered) occurring on a yearly basis and thus result in a risk score above ALARP.</p> <p>The Ports note that the "POTLL/ DPWLG supplied guidance" referred to does not account for concurrent pilotage operations.</p>
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 18, Paragraph 51	Section 12 provides a review of the TEOW NRA, and in particular the HRW report notes that the NRA did not consider ships over 11,000 TEU geometric capacity using the inshore route. However, on examination of the	The Ports wish to point out that there were 3 vessels of 11,000 TEU or more which boarded a pilot at NE Spit in the period December 2017 to November 2018 as is shown by Table 7.6 in the HRW Report.



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			<p>data presented by HRW, there are no vessels of 11,000TEU that have been shown in their data analysis to transit the inshore route. Further, in regards to the Pilot Transfer Bridge Simulations, the PLA chose to assess a 240m Ro-Ro vessel, as a representative large vessel that is high sided and has low manoeuvrability. The PLA, as the Competent Pilotage Authority, and Statutory Harbour Authority, through which all POTLL and DPWLG vessels navigate, is the closest statutory authority to the inshore route, for vessels bound to and from the Thames Estuary, and as such were best placed to identify the size and type of vessel that should be considered for simulation.</p>	
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 19, Paragraph 52	<p>The Applicant notes that whilst vessels of 11,000 TEU and greater currently visit DPWLG they do so via the SUNK pilot boarding station and therefore transit well clear of the TEOW, and the Applicant is not aware of any plans put forward by the PLA to consider that they would use the inshore route.</p>	<p>The Ports wish to point out that not all of the vessels of 11,000 TEU or more visit DPWLG via the sunk as is shown in Table 7.6 of HRW Report. It is noted that 5 of the vessels shown in Table 7.6 have a draft of 12m or above (the MSC Giselle for example has a draft of 14.4m – see www.marinetraffic.com).</p>
[REP6-040]	Annex B to Appendix 26 to Deadline 6 Submission: Applicant's Response to HR Wallingford's Final Report	Page 19, Paragraph 55	<p>Section 12.1.5 states that the "methodological basis for findings that the marine risk have been reduced to as low as reasonably practical (ALARP) levels is established and</p>	<p>It should be noted that HRW do not say that they agree with the NRA Report findings; they simply state that they understand the methodology used.</p>



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			understood”, and therefore it is understood that HRW agree methodologically with the NRA report findings. At this section the HRW report states that “since future demand is considered at a high level only in Section 6 of the NRA, it is not clear that collision modelling reported to have been carried out takes sufficient account of the space requirement for operations with significantly ships or greater numbers of ships”. The HR Wallingford report however, whilst stating future demand is only provided for at a “high level”, does not provide any further details on what any future demand should be.	

3. COMMENTS ON RESPONSES TO THE EXA'S FURTHER WRITTEN QUESTIONS

3.1 The following comments relate to the Applicant’s Appendix 22 to its Deadline 6 submissions (document reference [REP6-026]). With regard to each EXQ, the extract of the Applicant’s response on which we comment is first set out below:

ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
Navigation: Maritime and Air			
3.12.12	Allowances for traffic growth in collision risk modelling In [REP5-071] POTL/LGPL submission,	The Anatec SEZ CRM did include allowance for 10% traffic growth, and showed that the 10% traffic growth results in a greater increase in risk, than that generated by the construction of the TEOW.	The Ports consider that it would have been useful for the Applicant to clarify the level of increase in risk resulting from the 10% traffic growth assumption in the Anatec SEZ CRM. It remains



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
	<p>the HR Wallingford report asserts that collision modelling (on which the NRA relies) is deficient due to inadequate predictions of traffic growth. The Applicant has defended the figure of 10% traffic growth used for risk assessment generally, but would the Applicant also confirm in what way the collision risk modelling:</p> <p>a) allowed for overall growth of traffic; and b) allowed for predicted relatively larger growth of larger vessel traffic as accepted in other evidence.</p>		<p>unclear whether the level of increase was greater, lower or equal to 10%.</p>
3.12.13	<p>a) NPS Ports implies that the combination of a geographic shift in demand for port capacity towards the south east together with forecast GB growth rates for ports capacity when taken together suggest that trends extrapolated from historic traffic on the Thames Estuary may not</p>	<p>As confirmed during ISH8 by LGL/POTL where there is a shift to larger vessels these are unlikely to use the inshore route.</p> <p>This is also important to contextualise regionally through reference to Felixstowe, which has seen a</p>	<p>The Ports consider that the response given by the Applicant is a misrepresentation of LGPL/POTLL's comments made at ISH8.</p> <p>Indeed, Table 7.3 of the HRW Report [REP4C-016] demonstrates that vessels of up to 333m LOA and 14.1m drafts use the inshore route for transit (see www.marinetraffic.com data relating to MSC Chloe). Even with a shift to larger vessels, large vessels would continue to use the inshore route.</p> <p>The Ports consider that the reference to Felixstowe in the context of growth in shipping associated with</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
	<p>provide a sound basis for forward planning for ports capacity and effects of ports going forward. Please set out your observations on this.</p> <p>b) Are the NPS Ports policy assumptions about port and traffic growth rates (NPS growth rates) relevant to the adoption of growth assumptions for the NRA and NRAA for this Application and if not, why not?</p> <p>c) If the NPS growth rates are relevant, in the policy context around the need for ports development set by NPS Ports, acknowledging the Thames Estuary to be an existing and a prospective location for NSIP scale port development:</p> <p>i. does the 10% traffic growth assumption used for NRA purposes in this application sufficiently address the growth assumptions underpinning NPS Ports as summarized above;</p>	<p>reduction in 12% overall and a spiked decline of 15% between Q4 2017-and Q4 2018. This is important to note as London Gateway in particular have identified during examination that there has been a recent significant shift in trade from Felixstowe to London Gateway as a result of Gateway winning a suite of clients from Felixstowe. This therefore highlights a shift in shipping as a result of competition, but does not indicate an overall 10% increase in vessel traffic to the region.</p>	<p>the Thames Estuary or inshore route is irrelevant and is essentially a red herring. This is because Felixstowe vessel traffic does not utilise either the Thames or the inshore route. Therefore, whilst regionally an increase in throughput to the London Ports is somewhat offset by a decrease in throughput to Felixstowe, such a balancing factor does not apply to use of the inshore route and is therefore not relevant to the issues discussed in relation to the Examination of this proposed development.</p> <p>The Applicant's confirmation that there has been "a reduction of 12% overall and a spiked decline of 15% between Q4 2017 and Q4 2018" at Felixstowe is, however, noteworthy and demonstrates that the significant new port infrastructure which is now being implemented along the Thames is resulting in a significant and relatively rapid shift in trade towards London ports. Such growth, which is the result of the competitive nature of ports rather than just organic growth, cannot be simply adsorbed by increasing vessel sizes and will inevitably result in significant growth in vessel numbers visiting, i.e, shipping services switching to London ports.</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
	<p>ii. if it does not, could it reasonably be concluded that waters around the development would experience higher traffic levels than those included in the NRA and NRAA; and iii.if (ii) is the case, do the NRA and NRAA provide a sound basis on which to assess the effects on navigation risk of the proposed development in a context where NPS Ports compliant use and development continues to occur? d) Are there circumstances in which the proposed development could form a constraint on shipping traffic capacity that would limit the ability of existing and/ or prospective NSIP scale ports to contribute effectively to meeting the national need for port capacity assessed in NPS Ports?</p>		



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
3.12.15	<p>Future growth of shipping traffic In [REP5-012] D5 Appendix 7 para 81 the Applicant notes that Mr Crockett for POTL/LGPL accepted at ISH8 a figure of 10% growth for the inshore route and at para 92 that an increase in "larger vessels which would necessarily use the ...SUNK pilot boarding ground"; and at para 98 the Applicant states "...as vessel size increases use of SUNK over NE Spit boarding grounds would therefore be apparent...". Would POTL/LGPL, PLA and LPC: a) confirm this understanding of 10% growth of use of the inshore route; and b) provide a reasoned estimate for growth of traffic using the NE Spit Pilot Boarding Diamond; and c) with reference to their submissions at D5, confirm whether larger</p>	<p>The Applicant has utilised a 10% growth figure which reflects a balance of a ten year trend in growth (7%) against recent growth (11%) for the Port of London as noted in ExQ3.12.13, which it considers to be precautionary"</p>	<p>The Ports consider that it is difficult to understand how a 10% growth figure for a 35 year period from 2019 (reasonable planning horizon as referenced in the EXA's ISH2 Action Points (EV-003)) is considered precautionary in the context of 7% growth in 10 years and recent growth of 11% for the Port of London.</p> <p>Even simply applying the 7% figure pro-rata would suggest growth of 24.5% over the reasonable planning horizon (notwithstanding that the historic growth referenced will not have been influenced by the roll out of additional port infrastructure to the degree the future period will).</p>
		<p>Further to this, it is understood perishable cargos are generally carried on smaller feeder container vessels of around 130-180m in length"</p>	<p>The Ports dispute the Applicant's understanding of how perishable cargos are generally carried.</p> <p>The Applicant's understanding is relevant and probably applicable with regard to conventional 'reefer' vessels visiting Dover and Portsmouth, however such vessels represent a declining share of the global fleet and are largely focused on the carriage of bananas. Containerisation has resulted in the majority of perishable goods now being shipped by large container vessels. To evidence this the Applicant has highlighted as an example the following 6 container vessels which have visited DPWLG in the past week (26 May 2019 to 2 June 2019):</p> <p>26/5/19 – MSC Desiree – 300m LOA – 198 reefers 27/5/19 – AS Paulina – 210m LOA – 165 reefers 31/5/19 – Cartagena Express – 333m LOA – 349</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
	<p>vessels would necessarily use the SUNK approach to the ports; and d) what net difference is likely to be made to the overall traffic movements to and from the Ports of London and Sheerness over the life of the TEOW project due to increase in ship movements to and from the PoT and DPWLG; and e) provide evidence of what difference to the volume and profile of traffic using NE Spit PBD (whether or not via the inshore route) would be likely if a capital dredge were made of North Edinburgh Channel or Fisherman's Gat (as have been stated in evidence to this Examination as being under consideration although not as yet as firm project proposals), in particular the likely growth in Class 1 and 2 and other large vessels; and f) what might be a likely range of the quantum of</p>		<p>reefers 31/5/19 – Cap San Maleas – 333m LOA – 121 reefers 1/6/19 – MOL Proficiency – 293m LOA – 324 reefers 2/6/19 – MSC Athens – 300m LOA – 125 reefers</p> <p>The Ports can confirm that all reefers referred to above were 40ft units and therefore these vessels represent a total of 2,564 TEU of perishable throughput, equivalent to an average of 427 TEU per vessel. This is contrary to the Applicant's understanding of perishable cargos.</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
	<p>economic and commercial effects on the efficient use of tidally constrained berths at the London and Sheerness ports by adding approximately an hour's inbound steaming time should masters carrying time-critical or time-sensitive cargo decide (based on "dynamic risk assessment") to divert passage around the east of the Thanet WF and board a pilot at NE Spit instead of otherwise taking the shorter route to the NESP pilot diamond?</p>		
<p>3.12.27</p>	<p><i>a) whether or how the risk assessment has considered and scored the hazard to property, health and safety of pilots and launch crews, stakeholder or commercial interests of pilot boarding or landing operations at or south of the NE Spit diamond in such adverse Met Ocean conditions as the five instances described in the PLA/ESL submission noted above; and</i></p>	<p>As many container vessels stop at multiple ports, and the terminus to many liner services is western Europe where vessels have multiple port calls, some container vessel operators may redirect their vessels to the next port on their schedule (if open) and stop at London ports on their return.</p> <p>Often however, the limiting state, certainly for larger vessels is not necessarily at the pilot boarding location, but other aspects of a vessels transit and berthing into a port, such as wind restriction on specific channel transits or wind restrictions on berthing or cargo handling".</p>	<p>The Ports consider that this comment by the Applicant demonstrates a significantly outdated understanding of the modern logistics industry which has shifted significantly to a 'just in time' delivery approach. It also pays no regard to the significant quantities of perishable goods being imported via London ports (see the Port's Deadline 6 Representations [REP6-105] in which information in respect of perishables is outlined in more detail).</p> <p>It is to be noted that, as a result of their inland locations on the Thames estuary, quayside operations at London ports are not as affected by adverse weather as ports in some coastal locations. It is also the case that new port infrastructure (such as that at DPWLG) adopts a</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
	<p><i>b) what effect the proposed reduction to 2.1nm sea space between Elbow buoy and the proposed TEOW would have on the embedded risk and the ability of pilot services to provide continued service to inbound vessels; and</i></p> <p><i>c) what commercial effect might result from the inability to provide any pilot service to vessels seeking to enter the Thames in extreme MetOcean conditions such as the five noted in the PLA/ESL evidence above.</i></p>		<p>more automated approach to cargo handling which de-risks operations to a degree in adverse weather (by replacing the human element in hazardous locations such as within the container stack). As a direct example, some information is supplied in respect of LGP below:</p> <p>At the outset for the planning of LGP, specific consideration was taken in the design of the terminal to ensure that it would be open as much as possible. Commercially one of the biggest issues with UK ports is closure due to the weather. Competing ports can be closed for up to 10 days per year due to weather.</p> <p>Taking this consideration on board, LGP was specifically designed to be able to operate in the toughest of weather conditions such as strong winds. LGP spends a significant amount of additional money to enable the equipment to operate safely. Its quay cranes, which are used to unload/ load vessels, are designed to work in winds of up to 25 m/s (49 knots) compared to other competing ports which work up to 20 m/s (39 knots). An increase of 10 knots.</p> <p>The Automatic Stacking Cranes (ASCs) which load containers on and off trucks are designed to work in up to 28 m/s (55 knots). This is world leading.</p> <p>Since the opening of LGP just over 5 years ago, it has only been closed shipside (unloading/ loading ships) for 4.5 days. Landside (serving HGVs) it has</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
			<p>only been closed for 2.3 days.</p> <p>The weather resilience of LGP was reinforced earlier this year when Europe was hit by 10 days of strong winds. It caused massive issues in the ports around the UK, however LGP was only shut for 12hrs shipside and 4 hrs landside.</p> <p>Such resilience to adverse weather is part of DPWLG's unique selling point and contributes significantly to DPWLG's efficiency and thus its ability to compete with other ports such as Felixstowe. It also influences commercial decisions (i.e. by shipping lines) to provide services to DPWLG. If such efficiency was adversely affected due to delays to shipping on approach, the result would be an adverse effect on DPWLG's competitiveness.</p>
3.12.29	<p>Effects of additional risk to navigation in the vicinity of TOWF</p> <p>Would the Applicant re-submit their assessment of the environmental, commercial and economic effects of additional distance travelled due to re-routing around the proposed TEOW of vessels over the size assessed in the PTB Simulation.</p>	<p>The Applicant maintains that re-routing is not necessary as adequate searoom remains to allow safe passage through the inshore route. All other approaches to the Thames Estuary are narrower than the inshore route post-installation of the proposed project and as such passage planning will be made that accounts for more limited areas of searoom, and the inshore route will be a comparatively lesser concern</p>	<p>It is not clear what "other approaches" the Applicant is referring to, however, if this is reference to navigation channels such as Fisherman's Gat, Black Deep, the Sunk Separation scheme or Long Sand Head (the only approaches we are aware of that are narrower than the inshore route) it somewhat contradicts the Applicant's assertion that the inshore channel is an area of open sea and not a sea lane and that it may not even be a major commercial navigation route.</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
3.12.30	<p>Economic consequence of hazards In regard to the economic consequence of risk the POTL/LGPL D5 submission [REP5-071] argues that based on the NRA Addendum if the economic consequence of a hazard is over £100,000 it is a Category 3 risk and if the likelihood is more than yearly occurrence then it is above ALARP and therefore not tolerable. If well over a hundred vessels are diverted as a consequence of risk assessed, then an economic consequence of over £100,000 is 'highly likely' and the risk of economic consequence unacceptable.</p> <p>Would the Applicant</p>	<p>However, the potential consequence was considered in the context of the HAZID workshop, as is commonplace within such workshops to inform NRA.</p>	<p>Given that the Applicant's answer is in response to the EXA's question regarding economic consequence of risk as set out in the Ports' D5 submission [REP5-071], this statement appears to be at odds with the Applicant's verbal representations at ISH8 and in previous written representations.</p> <p>In previous representations the Applicant has maintained that the Ports did not raise such concerns at the HAZID workshop on 29 March 2019 or at the follow up teleconference on 2 April 2019 and, in fact, did not express concerns regarding consequence scores for stakeholders or property until 5 April 2019.</p> <p>However, the Applicant now appears to be suggesting that such concerns were considered at the HAZID workshop on 29 March 2019. The Ports can, in fact, confirm that there was no such consideration at the HAZID workshop, as demonstrated by the fact that the issue was raised with the Applicant during the teleconference on 2 April 2019 and followed up by an e-mail to the Applicant on 5 April 2019.</p>
	<p>confirm if and in what way traffic congestion and delay to port operations was considered as a potential consequence of collision involving a large commercial vessel and how it was assessed in the</p>	<p>It is noted that whilst this could have an increased cost to ESL and the PLA pilot, as a result of additional transit time to / from the further pilot diamonds and time on a vessel for a pilot, it is very unlikely that any incident in the area would close any London port even for a very short period of time</p>	<p>The statement made by the Applicant that increased pilot transit time could have an increased cost to ESL and the PLA fails to consider the availability of additional suitably trained pilots.</p> <p>Should the PLA/ESL not be able to identify and recruit additional pilot resource, the result of increased pilot transit time could mean delays to</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
	NRA or NRA Addendum?		shipping, as vessels are required to wait for pilots to become available. In the worst case this could result in constraints on trade and regional economic growth.
3.12.32(c)(i)(ii)(iii)	<p>c) the POTL/LGPL case that that "...the effect (of risk assessment) on vessels required to seek alternative pilot boarding locations..."</p> <p>i. would be such as to give rise to a consequence of hazard of Category 3 or above (£100k plus); and</p> <p>ii. at the likelihood assessed would "...give rise to a score above ALARP..." (i.e. in the "intolerable" range) and/or</p> <p>iii. that "...economic impacts can be seen to be at an unacceptable level";</p>	<p>As noted in Appendix 26 to Deadline 6 (written response to the POTL/LGPL) the Applicant does not consider the FSA Navigation Risk Assessment methodology suitable to assess economic impact as it does not relate to a navigation safety hazard. ALARP' is a definition of risk, not a definition for financial impact, and as such ALARP can only be applied in conjunction with a defined navigation safety hazard, the realisation of which must result in negative consequences such as a collision, contact or grounding, and not merely economic impact as a result of congestion or diversion where no navigation hazard has been realised.</p>	<p>With regard to the Applicant's response, the Ports make the following points:</p> <p>a) Economic and commercial impact is a consequence of increased risk (or the perception of increased risk). The impact will be the consequence of the shipping line, ship's master or pilot taking an alternative course of action to avoid risk or hazard. This point was emphasised by the Applicant in Appendix 12 to Deadline 5 Written summary of oral case [REP5-018] which discussed the actions of a ship's master on approach to an area of sea, stating that: "if the master feels he cannot balance out these conditions he would not proceed into that sea area" (Paragraph 89).</p> <p>b) The methodology proposed and relied upon by the Applicant to assess risk comprised four consequence categories including Property and Stakeholders. These are set out in Table 17 of the Applicant's NRAA [REP5-039]. In Table 17 consequence categories are defined with reference to financial values. With regard to stakeholders the descriptions for consequences given include loss of revenue and restrictions or disruption to operations. This is at odds with the Applicant's response to EXQ 3.12.32(c).</p> <p>c) Following the concerns raised by the</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
			<p>Ports during the post HAZID workshop teleconference on 2 April 2019 (concerns that were based on economic and commercial impact) the Applicant increased the consequence scores for stakeholders in the most likely scenario from Category 1 to Category 2. Clearly, at that time the Applicant felt that the NRAA methodology was able to consider such matters. In addition, no claim that the FSA risk assessment methodology was unsuitable to consider economic loss was made by the Applicant at ISH8. It has only been since the Ports demonstrated (through their Deadline 5 Representations [REP5-071]) that the level of impact would likely exceed £100,000 per annum, and thus fall within a Category 3 consequence occurring annually and resulting in an above ALARP and intolerable score (in accordance with Figure 25 of the Applicant's NRAA), that the Applicant has claimed that the FSA Navigation Risk Assessment methodology is not suitable to assess economic impact.</p> <p>d) Paragraph 2.6.163 of the National Policy Statement EN3 refers to a direct correlation between economic impact and ALARP. It states “<i>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)</i>”. It is noted that NPS EN3 considers ALARP to be a measure of impact (not risk as the Applicant suggests) and that the impacts to be considered</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
			<p>include those of an economic nature.</p> <p>The Ports contend that given the significance of the inshore route, paragraph 2.6.163 is not the highest tier of NPS EN-1 policy which should be considered in respect of the Application (further information in respect of policy is considered in section 5 below).</p>
3.12.32(d)	<p>d) how this tidal effect of traffic compression has been taken into consideration in assessing risk and effects of development in relation to economic and commercial aspects of shipping and port activities, (with reference to the [REP5-071] D5 submission by POTL/LGPL);</p>	<p>The Applicant notes the analysis contained within Section 7.1.3 of the NRA and represented in Figure 47, and that the accompanying text notes "The average height of tide per one, two etc. concurrent transits was calculated. The results show that between none and three concurrent transits, the average height of tide changes very little. On the six occasions in December 2016 when there were four or more concurrent transits, the height of tide was shown to be much greater however given that this accounts for less than 1% of the month its impact is not considered significant." This analysis demonstrates that there is actually little correlation between tidal time and congestion for the inshore route.</p>	<p>The Ports contend that if there were six occasions when four or more concurrent transits occurred and on all six occasions they corresponded with high tide, then this would appear to demonstrate a very strong correlation between tidal time and congestion, not "little correlation" as the Applicant suggests in its response.</p>
3.12.32(e)	<p>e) how in detail the NRA Addendum takes account of potential financial or economic loss to stakeholders or property interests as a consequence of glancing collision causing sinking of a fishing vessel and any resulting delay to shipping and port operations.</p>	<p>The Applicant notes that the NRA Addendum did not assess the hazards in which a glancing collision (which the Applicant would determine was a Most Likely outcome of a collision hazard), resulted in the sinking of a fishing vessel, and that this scenario would be considered a worst credible outcome of a fishing vessel collision hazard. In terms of how the realised hazard cost is split, the damage cost of a hazard occurring is assigned to the property consequence and costs (such as delay to shipping and port operations) would be considered within the</p>	<p>The Applicant's response is completely contrary to the discussions and subsequent agreement reached between the IPs and the Applicant at the HAZID workshop on 29 March 2019.</p> <p>At the workshop, when considering Hazard ID 1 (Collision of a Class 1 / 2 vessels), the IPs expressed confusion as to what the Class 1 / 2 vessel in question would be colliding with. The Applicant's response was that consideration should be for the Class 1 / 2 vessel in collision with all</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
		consequence to Stakeholders / Business category.	<p>vessel types. IPs expressed concerns with this approach given that the likelihood and consequences would greatly differ depending on what type of vessel the Class 1 / 2 vessel collided with. It was at this point that some IPs criticised the generalised categorisations, with some IPs suggesting a more granular approach was needed.</p> <p>Led by the Applicant those present at the workshop first considered the most likely outcome. With regards to collision, the Applicant suggested, and IP's agreed, that the most likely outcome would relate to a glancing blow. However all IPs present asserted and agreed that a glancing blow between a Class 1 / 2 vessel and a fishing vessel would almost inevitably result in the sinking of the fishing vessel. This was therefore considered within the range of most likely outcomes. While it was understood that the consequence for the fishing vessel falls to be considered under Hazard ID 4, the consequence for the Class 1 / 2 vessel of being involved in a collision which results in the sinking of a fishing vessel needs to be considered as well.</p> <p>This therefore falls to be considered under Hazard ID 1, as one of the most likely scenarios of a collision involving a Class 1 / 2 vessel (and indeed under Hazard ID 2 – for a Class 3 / 4 vessel). The consequences of such collision may include the Class 1 / 2 vessel being held over in port pending investigation, with potential for shipping line representatives (including senior crew) to be required to participate in post-accident enquiries.</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
			<p>There would also be consequences for the goods being carried on the vessel particularly if they were perishable goods. Such matters have not been considered in the NRAA, having appeared to have 'fallen between the stools' as a result of the approach adopted. If this had been properly considered then the consequence score attributed to the Class 1 / 2 vessel would appropriately be significantly higher than Category 2 (under £100k cost).</p>
3.12.33	<p>... Is the Applicant willing and able to submit such an economic assessment to the Examination at D6?</p>	<p>The Applicant maintains that given the negligible impact on vessel routing, and that it is not considered necessary as a result of the introduction of the SEZ any economic impact will also be of a negligible magnitude. Notwithstanding this the Applicant has undertaken an illustrative assessment through reference to material submitted by IPs during the examination process. This illustrative assessment is presented at Annex C to Appendix 26 of this Deadline 6 submission.</p>	<p>As a point of clarification, the reference in the Applicant's response to Annex C of Appendix 26 appears to be in error with the correct reference being Annex C of Appendix 16 (REP6-020).</p> <p>The Ports note that the only assessment of economic effects submitted by the Applicant to inform the examination is that now provided as Annex C to Appendix 16 of the Deadline 6 submissions [REP6-020]. Therefore it is not clear what assessment gives rise to the Applicant's conclusion of "negligible impact", and the apparent attempts by the Applicant to distance itself from the conclusions provided within the submitted assessment seem perverse given that this is the only assessment which has been submitted in support of the application.</p> <p>The Ports have examined the Applicant's "illustrative assessment" in Annex C to Appendix 16 and understand it to offer the following conclusions with regard to overall economic impact:</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
			<ul style="list-style-type: none">• 54 vessels that would not transit between Elbow Buoy and the SEZ and would instead re-route east of the TEOWF resulting in a total cost of £98,592 (Ref: Para. 40 and Table 3);• between 0.5% (Para. 52) and 1% (Para. 53) of vessels would suffer additional delays to pilot boarding as a result of loss of resilience associated with the TEOWF. When related to total ESL transfers for 2018 (Table 2) this equates to between 33 and 65 vessels. The cost of such delays is not quantified in monetary terms however, given the delays would likely be significantly greater on average than one hour (particularly if a tidal or port berth window is missed) and relate to a similar number of vessels, the resulting cost is assumed to be significantly greater than the cost figure for diverted transits (£98,592); and• there would be additional steaming time for pilots and pilot vessels serving vessels displaced to the Tongue DWD. This is stated as equal to 35 hours but is not quantified in monetary terms. <p>The Ports note that the assessment provided by the Applicant in Annex C to Appendix 16 has given no regard to devaluation of perishable goods resulting from delays to vessel passage. The Ports accept that devaluation of perishables is unlikely to be significant with regard to diverted transits (as the additional 1 hour steaming time will be foreseen and could therefore be planned) but maintain that such costs associated with pilot</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
			<p>boarding delays (due to loss of resilience of pilot boarding stations) would be significant. In this regard the Ports refer to their Deadline 6 submissions [REP6-105] which, in response to EXQ 3.12.15(d), identify that vessels over 240m are likely to carry an average of either 277 tonnes (POTLL vessels) or 297 TEU (DPWLG vessels) per vessel. Thus the impact of pilot boarding delays due to loss of resilience resulting from TEOF would fall in a range somewhere between 9,141 tonnes or 9,801 TEU (if 33 vessels delayed) or 18,005 tonnes or 19,305 TEU (if 65 vessels delayed).</p> <p>The Ports also note that the assessment in Annex C to Appendix 16 is based on historic vessel numbers and has given no regard to future growth within the 'Reasonable Planning Horizon', which the Applicant has assumed to be 10% but IPs (including the Ports) contend will be significantly higher (as set out in more detail in the Ports' previous representations).</p> <p>The Ports consider that it is eminently clear that the total level of economic consequence to stakeholders is significantly in excess of £100,000, and potentially in excess of £1,000,000, giving rise to a consequence score of a minimum of 3 (and potentially 4) when assessed in accordance with Table 17 of the Applicant's NRAA (REP5-039). Given that such consequence would occur on an annual basis, in accordance with Figure 35 of the NRAA this gives rise to a hazard score of 8.3 (and</p>



ExQ3	Question	Applicant's Response	Ports' comments on the Applicant's Response
			<p>potentially 9.4), which, as indicated by Table 18 of the NRAA, is above ALARP and in-tolerable.</p> <p>The Ports consider that the Applicant's last minute attempt to provide economic assessment of the impacts of the proposed offshore wind farm extension is deficient, rushed and lacking in a number of areas. On that basis it is hard to conclude that the assessment has been carried out in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). The Ports would highlight in particular regulation 14(4) (a) of the EIA Regulations which requires that: "<i>the applicant must ensure that the environmental statement is prepared by competent experts</i>". While the Ports do not question the quality of the consultants used by the Applicant in drafting the Application, it remains unclear whether a suitable organisation has been consulted and given a sufficient brief in order to carry out in depth economic assessment of the impacts of the proposals. The Applicant's statement that it has produced "<i>an illustrative assessment through reference to material submitted by IPs during the examination process</i>" certainly suggests that it has not given due regard to carrying out a thorough economic analysis of the impacts of the proposals and instead of instructing a suitable competent expert to carry out independent analysis, it has sought simply to rebut the material submitted by IPs during the Examination. Nevertheless, taken at face value the Applicant's assessment results in above ALARP</p>



ExQ3	Question	Applicant's Response			Ports' comments on the Applicant's Response
3.12.35(a)	Would the Applicant please: a) comment on this [REP5-012] comment on consequence of NRAA Hazard #1;	In terms of a most likely occurrence to NRA A Haz #1 then the hazard outcomes were determined and agreed as:			hazard scores. As discussed in detail herein within comments on the Applicant's response to EXQ 3.12.32(e) and EXQ 3.12.33, the Ports do not accept that these hazard outcomes were or are agreed.
			Haz Workshop	Post workshop	
		Narrative	Glancing Blow		
		People	Minor-Single minor injury	Minor-Single minor injury	
		Property	Minor damage	Minor damage	
		Environment	Negligible-Very Small Spill	Minor -Tier 1	
		Stakeholders	Negligible-No significant effects	Minor - Bad local publicity and/or possible short-term	



ExQ3	Question	Applicant's Response			Ports' comments on the Applicant's Response
				loss of revenue	
		<p>The Applicant does not consider the sinking of a vessel to relate to a “most likely” occurrence, but following the workshop and representation from POTLL / DPWLG then hazard consequence scores for the most likely consequence for Environment and Stakeholders / Business were increased to accommodate for the possibility for delay to a vessel involved in an incident due to investigation requirements.</p>			

4. COMMENTS ON RESPONSES TO THE EXA'S DCO COMMENTARY

4.1 At Deadline 5A the Ports submitted comments on the Applicant's draft DCO [REP5A-001]. The Ports' submissions included two main comments: one in respect of the impact on shipping; and one in respect of the safety of navigation. The ExA published its commentary on the draft DCO on 7 May 2019 and sought comments from IPs on numerous issues. The issues which concern the Ports mainly pertain to the drafting suggested by the Ports at Deadline 5A. The Ports have set out a response below and in doing so have focused on the comments of the Applicant, Trinity House, the MCA and the PLA/ESL.

4.2 Comment number 16 in respect of Article 16:

"Public rights of navigation: additional security for navigation safety in construction Port of Tilbury London Ltd., London Gateway Port Ltd. have requested [REP5A-001] that Art 16 be amended to extend the navigation safety measures for permanent structures to cover temporary construction works. It flags that similar measures enabling Trinity House to give directions for the lighting and marking of works are a standard provision in Ports DCOs and Harbour Orders.

The Applicant is requested at Deadline 6 to either:

- a) Propose relevant changes; or*
- b) Provide an explanation why such drafting is not warranted.*

The relevant IPs and Other persons are asked to make concluding submissions on this point at Deadline 7"



4.3 The Applicant has not responded to this point in its Deadline 6 representations. The Ports therefore have no further comments to add to those made in respect of this article at Deadline 5A and it is noted that the Applicant is in discussions with Trinity House in respect of this article.

4.4 **Comment number 29 in respect of Schedule 1 , Parts 1 and 3 and/ or Schedule 8 (Protective Provisions), Schedule 11 (Generation Assets Deemed Marine Licence**

"Structures Exclusion Zone and navigation risk mitigation

Without prejudice to any more general oral and written submissions about the effect and extent of the Structures Exclusion Zone (SEZ) and other controls in the dDCO which aim to reduce navigation risk to ALARP, all relevant IPs and Other Persons are requested to make final submissions on additional drafting to provide for the SEZ by Deadline 6."

4.5 As set out above, the Ports made submissions in respect of DCO drafting in their Deadline 5A Representations and have no further comments to add at this stage.

4.6 **Comment number 30 in respect of Schedule 1 Part 3 (possible new requirement)**

"Navigation safety and shipping impact mitigation plan

Port of Tilbury London Ltd. and London Gateway Port Ltd. (the Ports) [REP5A-001] highlight that whilst Sch 11 Condition 13 (Generation Assets DML) provides an approval to the MMO for a construction programme and monitoring plan to include "details of the works to be undertaken within the structures exclusion zone; and [...] the proposed timetable for undertaking of such works within the structures exclusion zone..." it would be desirable for this or an equivalent plan to be approved by the Maritime and Coastguard Agency. The Ports suggest that for this to be secured, a new Requirement should be provided, translating the effect of the plan approval requirement in Sch 11 Condition 13 into the body of the DCO for approval by the Maritime and Coastguard Agency.

By Deadline 6:

a) The Maritime and Coastguard Agency is requested to engage with Trinity House to consider whether such a provision would address their concerns and; if so

b) Whether it should secure consultation or approval by either one or the other body (which one) and

c) How such a provision might be drafted.

By Deadline 7:

d) The Applicant, Port of London Authority, Port of Tilbury London Ltd. and London Gateway Port Ltd. are to respond on the need for and form of any such provision.

It follows that a final response by the Applicant to drafting arising from this comment can be made at Deadline 8"



4.7 **The MCA's response**

"a) The Maritime and Coastguard Agency is requested to engage with Trinity House to consider whether such a provision would address their concerns:

This provision is not sufficient to address our concerns listed above. We would expect a construction programme and monitoring plan to include "details of the works to be undertaken within the structures exclusion zone", anyway.

b) Whether it should secure consultation or approval by either one or the other body (which one) and

The construction programme and monitoring plan should be conditioned, and we would expect the MMO to consult the MCA prior to the approval of this document.

c) How such a provision might be drafted

DML conditions are approved by the MMO in consultation with the relevant consultee(s). The MMO consults the MCA on the construction and monitoring plan before signing off the licence condition and we would expect the MMO to consult the MCA for such a plan for the SEZ.

4.8 The Ports note that the MCA does not consider that such a requirement would be sufficient to address the MCA's overall concerns and its Deadline 6 position that it *"is unable to agree that the proposed project is acceptable with regards to the safety of navigation"*. The Ports agree that such a requirement would not fully address such concerns however it would add an element of control to works carried out in the SEZ, which is the purpose of the proposed requirement. The MCA does not dismiss the notion of control being added and appears to agree that it should be consulted on the construction programme monitoring plan through the consultation with the MMO on the DML condition.

4.9 The Ports maintain that the MCA is the appropriate authority to approve the construction programme and monitoring plan (alongside the MMO) due to its functions in respect of shipping. If explicitly secured through such a requirement, this would provide an element of control over works carried out in the SEZ and would help to ensure safety for the potential construction impacts on shipping. Works in the inshore channel would therefore be approved by an appropriate body having a concern for shipping interests. This is not the MMO's role, hence the controls in the DML alone are not sufficient. The requirement suggested by the Ports would codify the MCA's position and ensure that it had control of the construction programme and monitoring plan in the interests of navigational safety.

4.10 **Applicant's response**

"The Applicant notes that this response is to be provided by other parties but considers that such a requirement is unnecessary, principally because the MMO is responsible for the enforcement of marine licences."



Pinsent Masons

4.11 The Applicant's view is noted. The point which the Applicant highlights (that the MMO is responsible for the enforcement of marine licences) actually goes to the heart of why an additional requirement in favour of the MCA is necessary. The MMO's role does not concern shipping safety and as such there should be an appropriate provision in the DCO for the construction programme and monitoring plan to be approved by the MCA, which is concerned with shipping safety.

4.12 **Trinity House response**

"TH consider that this type of provision would not deliver significant risk mitigation in addition to the existing provisions. If it does get included it would be for the MMO and MCA to approve as it would need to encompass post consent requirements."

4.13 The Ports note that Trinity House does not consider that it should be included in the approval of such a requirement.

5. FINAL SUBMISSIONS

5.1 Despite not having been consulted by the Applicant on its proposals for the offshore wind farm extension during the pre-application stage, the Ports have engaged diligently and thoroughly with the Application throughout its examination. The Ports have done so at considerable cost both financially and in terms of time, however they consider that their engagement has been necessary and hope that it has been of assistance to the ExA. As commercial entities operating on the Thames estuary, the Ports are primarily concerned with the considerable economic and commercial impacts which they consider could be caused if the offshore wind farm extension is consented. It is regrettable that with the end of the examination now upon us, there remain a number of areas of fundamental disagreement between the Applicant and the Ports. The Ports had hoped that through their engagement with the examination process, an acceptable compromise could be reached and that they could say that they were satisfied that the Applicant's proposals would not cause a significant economic and commercial impact to the Ports. Unfortunately, this is not the case and a summary of the main issues which remain are set out in more detail below.

5.2 The Ports have made submissions at each examination deadline as directed by the ExA, have participated in issue specific hearings and have submitted a report by HR Wallingford [REP4C-016] on navigation aspects of the proposals in the Application.

5.3 The Ports have entered into a statement of common ground with the Applicant which was most recently submitted at Deadline 6 [REP6-106]. The main overarching issue in respect of the Application which the Ports continue to object to is the inadequacy of the assessment of navigational safety and the resulting potential economic impacts on commercial vessels. This overarching issue can be broken down into a number of sub issues and the Ports consider that the following matters need to be addressed in order to assess the magnitude and range of potential impacts on commercial shipping interests (such concerns have been covered in detail in the Ports' representations and so the below provides only a summary):



- (a) a pilotage simulation study, which is representative of the size and mix of vessels likely to transit the inshore channel/board pilots at the NE Spit in the future baseline scenario, is required to inform sea room requirements and likelihood of incidents. The Applicant has had ample time and opportunity to provide this during the Examination and it is not clear why it has refused to do so;
- (b) appropriate allowance should be made for uplift in the number of vessels transiting the inshore channel / boarding at the NE Spit in the future planning horizon;
- (c) appropriate vessel traffic mix should be considered (with regard to draught and manoeuvring characteristics in addition to LOA);
- (d) consequence scoring needs to be re-scored in particular in respect of property and stakeholders; and
- (e) a thorough assessment of the potential economic impacts of the project needs to be carried out by the Applicant.

5.4 In the absence of the Applicant addressing these issues, the Ports contend that the Application is not compliant with (a) national planning policy; or (b) the Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). More detail regarding planning policy is included at paragraph 5.8 below. The EIA Regulations require that the environmental impact assessment includes the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment. At present, it cannot be said that such information (i.e. the assessment of navigational safety and the resulting economic impacts on commercial vessels) is available and, as such, the environmental statement is considered deficient and not compliant with the EIA Regulations.

5.5 Much of the discussion during the course of the examination has centred on navigation risk and safety. The Ports wish to highlight that it is not only actual navigation risk which could lead to economic impacts on the ports, but perceived navigational risk must also be considered given that the perception of risk amongst mariners, sea users and pilotage operators will ultimately lead to behavioural changes which could have economic consequences. As such, the views of the other IPs engaged with the examination of the proposals are highly material to the view of the Ports. It is highlighted that the following statements have been made at Deadline 6 by IPs with a concern for the safety of navigation:

- (a) MCA: *"the MCA is unable to agree that the proposed project is acceptable with regards to the safety of navigation"* [REP6-087];
- (b) Trinity House: *"the NRAA only identified a limited amount of general risk and we cannot categorically state that "all" risk to shipping and navigation have been reduced to ALARP"* [REP6-108]; and
- (c) the PLA/ESL *"if the Order is made in the from currently proposed, the PLA and ESL will remain concerned about the safety of navigation and the continued viability of their operations to the west of the existing wind farm"* [REP6-097].



- 5.6 Evidently the statements above make it clear that the Applicant has failed to provide adequate and robust assessment to convince many of the key bodies with a concern for navigational safety that the proposals are acceptable in respect of safety of navigation. It is therefore clear to the Ports that if the Order is made in its current form then at the very least perceived risk will exist. With perceived risk will come economic impacts.
- 5.7 The Ports have set out in some detail in their representations, the great importance of the shipping industry both regionally and nationally with approximately 95% (by volume) and 75% (by value) of all UK trade in goods handled by ports. This, and other pertinent information in respect of the shipping industry, is set out in the Ports' Deadline 1 representations [REP1-148]. The Ports are grateful to the ExA for allowing them the opportunity to demonstrate the scale, 'just in time' nature and scope for development at both London Gateway Port and Port of Tilbury on the site visit carried out on 15 April 2019.
- 5.8 **Planning Policy**
- 5.9 In respect of planning policy, action point 4 of the ExA's ISH8 Hearing Action Points note (published on 18 April 2019) required the IPs to outline their final position regarding policy. The Ports have already set out extensive representations in respect of planning policy in particular in their Deadline 3 submission [REP3-070] which included a Planning Policy Position Paper at Annex 1 (the Planning Policy Position Paper).
- 5.10 As explained in the Planning Policy Position Paper, in accordance with section 104 (decisions in cases where national policy statement has effect) of the Planning Act 2008:
- "(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."*
- 5.11 As such, the two ports contend that the following should be taken into account in deciding the Application:



- 5.11.1 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);
- 5.11.2 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 area of the proposed South East Marine Plan; and
- 5.12 any other matters which the Secretary of State thinks are both important and relevant to his/her decision, which the Ports contend should include:
- (a) the National Policy Statement for Ports, January 2012.
- 5.13 The Planning Policy Position Paper sets out information in respect of each of the policies outlined above in more detail including their applicability to the proposed extension offshore wind farm. It concludes that *“the Ports 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 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.”* The Ports have not moved from this position.
- 5.14 A great focus of the policy discussions during the course of this examination has been on paragraphs 2.6.161-2.6.162 of EN3. Key excerpts from that policy with our underlining is set out below for reference:

2.6.161: “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.



2.6.162: *"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.*

2.6.163: *"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."*

- 5.15 At Deadline 4, the Ports submitted a short response to Deadline 3 submissions. This reiterated the Ports' position that the inshore route should be considered to be a recognised sea lane essential to international navigation for the purposes of applying EN-3 to the application. In addition, the Ports aligned their position to that of the MCA's Deadline 3 submission. The MCA's position was that:

...that area of sea is actively used by all vessel types, including large commercial and international vessels. It is therefore considered an essential area for navigation and of strategic importance for vessel operation and accessing ports, with the SUNK TSS, an internationally recognised and established sea lane, in close proximity.

Looking at the Archipelagic Sea Lanes given in the IMO Ships' Routing Guide, and the criteria for such measures as set out in UNCLOS, this area meets many of the conditions necessary for it to be designated as such. UK experts on UNCLOS advised that the area is within the UK's Territorial Sea, therefore, international recognition by IMO may not be mandatory before UKHO would chart it, however explicit MCA direction to do so will be required.

- 5.16 The Ports note that the Applicant submitted with its Deadline 4 submissions: *"Appendix 5 to the Deadline 4 Submission - Responses to comments on Shipping Policy Considerations"* [REP4-007]. This document concludes that EN-3 paragraph 2.6.163 applies to the inshore channel and that in respect of EN-3 paragraph 2.6.162 *"no substantiated case, by reference to regulatory definitions or otherwise, to confirm*



that the inshore or northern routes fall within this definition" and in any case that: "Even to the extent that a few vessels diverted from the inshore route (which is not accepted), the proposals would not therefore conflict with this aspect of policy (if it were considered to apply)". The Applicant also argues that EN-3 Paragraph 2.6.161 does not apply to the inshore channel. The Ports do not agree with the Applicant's position.

5.17 In respect of paragraph 2.6.161 the Ports defer to the position of the MCA which is set out above. The Ports note the MCA's comments and the importance which the MCA assign to the inshore route stating that it is an "essential area for navigation and of strategic importance for vessel operation and accessing ports".

5.18 As per the Ports' submissions in the Planning Policy Position Paper, it is contended that, at the very least, the policy in paragraph 2.6.162 of EN-3 should apply. This 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.

5.19 As set out in the Planning Policy Position Paper, EN-3 does not provide a definition of "major commercial navigation routes" however 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 the inshore route as is demonstrated by POLARIS (Port of London River Information System) database data and AIS data (see the HRW Report submitted by the Ports to the examination [REP4C-016] which sets out an analysis of such data) . In addition the view of the MCA outlined above is of importance, i.e. that the route is an: "essential area for navigation and of strategic importance for vessel operation and accessing ports". In addition, the MCA has further set out in its Deadline 5 Representations [REP5-063] that: "the area of concern is an area of sea to the west of the existing Thanet windfarm and while it is not an IMO designated routeing measure, the area of sea is actively used by all vessel types, including large commercial and international vessels. It is therefore considered an essential area for navigation and of strategic importance for vessel operation and accessing ports. The SUNK TSS and Dover Straits TSS, both internationally recognised and established sea lanes, are in close proximity to the north and south of the TEOW site and, therefore in an operational sense, the area of sea should be treated as a recognised sea lane". Given that the MCA considers that the inshore route should be treated as a recognised sea lane, i.e. as per EN-3 Paragraph 2.6.161, it would be hard to argue that at the very least the second highest tier of policy in EN-3 at paragraph 2.6.162 would not apply and that the inshore route is not at least a "major commercial navigation route".



- 5.20 As such, in determining the Application, the Secretary of State should give at least "*substantial weight*" to the adverse effects on the inshore route but should be mindful of the view of the MCA that the inshore route should be "*treated as a recognised sea lane*". In respect of "*longer transit times*", as set out at some length in the Ports' representations, if the inshore route cannot be used then there will be appreciably longer transit times and the impact of this should therefore be given substantial weight. Given the lack of economic assessment carried out by the Applicant in respect of the Application (save for what the Applicant has described as an "*illustrative assessment [created] through reference to material submitted by IPs during the examination process*" at Annex C to Appendix 26 of the Applicant's Deadline 6 submission), it is not possible for the Secretary of State to be satisfied that 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.
- 5.21 The Ports therefore maintain that the application cannot be regarded as being in accordance with the relevant national policy statements. The Secretary of State should therefore refuse development consent on this basis alone.
- 5.22 **Structures Exclusion Zone (SEZ)**
- 5.23 As set out in more detail at ISH8 and in the Deadline 4C representations [REP4C-016], the Ports remain to be convinced that a SEZ is the appropriate means to seek to reduce the impact of the extension to the offshore wind farm. The appropriate starting point to try and mitigate the impacts of the wind farm extension must be through an order limits reduction. The Ports have nevertheless attempted to assist the ExA in providing proposed DCO drafting in order to enhance the control of key IPs over activities carried out in the SEZ (see section 4 above).
- 5.24 **Simulation study**
- 5.25 As set out above, the Ports consider that a key missing element of assessment in this Application is a further pilotage simulation study, one that is representative of the size and mix of vessels likely to transit the inshore channel/board pilots at the NE Spit in the future baseline scenario. This is required in order to inform sea room requirements and the likelihood of incidents. Without such a study, it is simply not possible to assess adequately the impacts on navigational safety and the resulting economic impacts on commercial vessels. The Applicant has had ample time and opportunity to provide this during the Examination and it is not clear why it has refused to do so.
- 5.26 In the Ports' Deadline 6A representations, they commented that the ExA is obliged to report on the Application, and to make its recommendations to the Secretary of State, based on the evidence and submissions before it at the end of the Examination.
- 5.27 If, in the light of those recommendations, the Secretary of State considers that more information is needed, e.g. in respect of economic impact assessment or the suggested additional simulation study, then, in the normal way, that further information may be requested of the Applicant and of IPs and OPs during the decision period. The Ports consider that such a further pilotage simulation study in particular would certainly be of great value to the Secretary of State in evaluating the overall impact of the proposed development. Without such a further study, the



Ports contend that it is simply not possible for the Secretary of State to make a reasoned assessment of the navigation risks and economic impacts of the project and that therefore the application for development consent should be refused.

5.28 **Final statement**

5.29 The Ports consider that in its current form and based on the evidence before the ExA, the application for development consent should not be granted owing to uncertainty as to the economic impact and navigational safety implications of the scheme. These implications have not been properly assessed, as outlined above and in more detail in numerous representations of the Ports and other IPs.

5.30 Unless the Secretary of State considers, despite the front loading requirements of the Planning Act 2008 regime and the many opportunities given to the Applicant during the Examination to supplement the evidence in favour of the scheme, that further evidence as to impact should, and can properly, be required in the determination period, the Application should be determined with reference to the evidence made available to the ExA. As that evidence is deficient and lacking in a number of important respects, applying the relevant provisions of National Policy Statement EN-3 the application for development consent should be refused.