

**THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010**

**FIVE ESTUARIES OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER**

**PINS REFERENCE EN010115**

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**DEADLINE 4: PORT OF LONDON  
AUTHORITY'S COMMENTS ON SUBMISSIONS  
RECEIVED AT DEADLINE 3**

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## 1 INTRODUCTION

1.1 This is a written submission made on behalf of the Port of London Authority (“**PLA**”) in respect of comments on Deadline 3 submissions.

1.2 Documents referred to in this submission are:

- (a) Applicant’s comments on Deadline 2 Submissions (REP3-024);
- (b) Outline Marine Written Schemes of Investigation (REP3-013);
- (c) Draft development Consent Order (REP3-006); and
- (d) Marine Management Organisation deadline 3 submission (REP3-029)

## 2 APPLICANT’S COMMENTS ON DEADLINE 2 SUBMISSIONS (REP3-024)

2.1 The PLA welcomes the Applicant’s commitment to “*an under keel clearance of 22m below Chart Datum*”<sup>1</sup>. The PLA and the Applicant continue to discuss, with a view to reaching agreement shortly, the area over which this deeper cable burial needs to be secured.

2.2 Whilst the Applicant has shared with the PLA an updated version of the Navigation Installation Plan (“**NiP**”) since Issue Specific Hearing 3 (“**ISH3**”), the PLA awaits further engagement on the Outline Cable Specification and Installation Plan (“**oCSIP**”)<sup>2</sup>. This further engagement is crucial given the Applicant’s reliance on the CSIP to “*ensure an under keel clearance of 22m below CD is maintained in proximity to the DWRs*”. The lack of engagement is also disappointing given the Applicant’s comments in REP3-024 that “*the oCSIP will be updated and submitted at Deadline 4*”<sup>3</sup>. This means that the oCSIP will have been updated and submitted to the examination without any engagement taking place with the PLA on the contents of the document.

2.3 Whilst the PLA notes the Applicant’s comments in relation to adherence to Marine Guidance Note (“**MGN**”) 654 and its annexes, the Applicant will be relying on the CSIP to identify areas where they can be no reduction in under keel clearance and adherence to MGN654 will apply to the rest of the Order Limits<sup>4</sup>. In the absence of changes to the Deemed Marine Licence (“**DML**”) this could result in confusion and the necessary requirements not being met at the deep water routes (“**DWRs**”). The PLA considers that the following amendments are required to Schedule 11 Part 2 Condition 4 of the draft Development Consent Order (“**dDCO**”) (additional text in bold):

*4.-(1) The undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise.*

*(2) Maintenance works include but are not limited to-*

- (a) offshore electrical components;*
- (b) painting and applying other coatings;*
- (c) bird waste and marine growth removal;*
- (d) cable remedial burial;*

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<sup>1</sup> Applicant’s Comments on PLA-01

<sup>2</sup> As suggested by the Applicant’s comments to PLA-02

<sup>3</sup> Applicant’s comments on PLA-20

<sup>4</sup> Applicant’s comments on PLA-06

- (e) cable repairs and replacement;
- (f) cable protection replenishment;
- (g) access ladder and boat landing replacement; and
- (h) J-tube repair/replacement.

(3) In undertaking activities under condition 4(2)(d) to (f), the undertaker must not reduce water depth:

(a) **in any area outside of the Area of Interest** by more than 5% unless agreed with the MMO in writing; **and**

(b) **within the Area of Interest so that the water depth in the Sunk and Trinity deep water would not be maintained at all states of tide to at least 22m below Chart Datum.**

2.4 The PLA welcomes the Applicant's comment that whilst the precise crossings of Sealink and North Falls are subject to detailed design they will take place to the east of the DWRs<sup>5</sup>. Given this comment, the PLA considers that the oCSIP should be updated to include this as an embedded mitigation. In addition the DML should include the following as part of condition 3:

**"3(3) The burial depth of the cables for Work No. 2 together with any cable crossings, cable protection measures and cable protection remediation must ensure that the depth of the Sunk and Trinity deep water routes are maintained at all states of the tide to at least 22m below CD within the Area of Interest".**

2.5 The PLA and the Applicant disagree in relation to what (if any) approvals the PLA should have through the dDCO. The Applicant advances an argument that it would not be appropriate for the PLA to control activities in an area of free navigation<sup>6</sup> but then points to the MMO approving those same activities under the DML. It therefore cannot be a matter of principle for the Applicant in terms of activities being consented in an area of free navigation if the MMO have those controls through the DML.

2.6 The PLA is a Statutory Harbour Authority and notwithstanding that the proposed development is outside of the PLA's area of jurisdiction in terms of the Port of London Act 1968, the Port Marine Safety Code – For all UK Harbour Authorities and other marine facilities berths and terminals (November 2016) ("**the Code**") sets out a national standard for every aspect of port marine safety. Whilst it is not mandatory, there is a strong expectation that all harbour authorities will comply. The Code provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. The Code is clear that as a Harbour Authority the PLA are responsible for safe marine operations in the harbour area and its approaches.

2.7 Of relevance to this matter are the general duties and powers set out in the Code. These include:

*Open Port Duty: Taking reasonable care, so long as the harbour or facility is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property.*

*Conservancy duty: Conserving the harbour or facility so that it is fit for use; this duty also includes providing users with adequate information about conditions in the harbour or facility.*

2.8 Members are individually and collectively accountable for compliance with the Code and their performance in ensuring safe marine operations in the harbour and its approaches and the

<sup>5</sup> Applicant's comments on PLA-14

<sup>6</sup> Applicant's comments on PLA-15

Harbour Master has day-to-day responsibility for managing the safe operation of navigation and other marine activities in the harbour and its approaches.

- 2.9 The Guide to Good Practice on Port Marine Operations (prepared in conjunction with the Port Marine Safety Code 2016) supplements the Code and emphasises that a harbour authority is responsible for navigational safety both within its jurisdictional limits and in respect of its approaches.
- 2.10 As an example, section 2.3.12 states (emphasis added): *"In compliance with the requirements of the Port Marine Safety Code, the organisation/harbour authority will discharge its general and specific statutory duties in respect of:... the conservancy of the harbour and its seaward approaches"*.
- 2.11 It is of note that the report on the refused Thanet offshore wind farm extension (PINS Reference EN010084) states (emphasis added) *"The Proposed Development would be located in waters adjacent to the entrance to the Thames estuary, where navigational safety and the maintenance of access to nationally significant port facilities are NPS and MPS policy-supported and give rise to important and relevant considerations of great weight."* In the case of the Thanet Wind Farm extension, taking all relevant evidence and policies into account, *"the ExA found generally that the policy test in EN-3 paragraph 2.6.147 '... wind farms should not be consented where they would pose unacceptable risks to navigational safety after mitigation measures have been adopted', had not been met, and that as required by NPS EN-3 paragraph 2.6.168 the Secretary of State should have regard to the obstruction of navigation in the sea area containing relatively high traffic density and complex navigation patterns that would be created between the proposed Development and the NE Spit navigational mark despite the SEZ, and to a lesser extent between the proposed Development and the Elbow navigational mark. In both cases additional danger to navigation would result"*.
- 2.12 Furthermore the ExA considered *"NPS Ports para 3.4.13 to be both important and relevant to this application given it cites the need for resilience of ports to account for 'short term demand peaks, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties without causing economic disruption through impediment to the flow of imports and exports', and that despite the introduction of the SEZ, the Applicant has not minimised navigation safety; as a consequent effect there is a probability of negative effects to the efficiency and resilience of continuing port operations as well as further port development. This is further compounded by the additional risk to or displacement of pilot transfer"*.
- 2.13 The PLA considers that it should be possible to ensure that the required access to the Port of London is maintained over the lifetime of the project and that as the Statutory Harbour Authority for the Port of London it would be appropriate for the PLA to have protective provisions as the mechanism to ensure that the required access to the Port is maintained. These protective provisions would be alongside revisions to the draft Marine Licence which appears at Schedule 11 of the dDCO to ensure that the PLA is also consulted by the MMO and notified on key matters so that the MMO is aware of the PLA's position on approvals. The PLA is discussing appropriate revisions with the MMO.
- 2.14 The Applicant indicates that it has no intention of depositing dredged material within the DWRs and that the Applicant is preparing a sediment disposal plan which will provide further detail and control on deposition<sup>7</sup>. The PLA awaits sight of the sediment disposal plan which the Applicant has advised will provide further detail and control on the deposition of dredge material and how the requirements in that plan will be secured by the dDCO.
- 2.15 The Applicant advises that the outline Cable Burial Risk Assessment ("**oCBRA**") is for information only and that there is no intention that the CBRA will be a document that requires approval nor consultation<sup>8</sup>. This is surprising given that the oCBRA [APP-239] sets out in

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<sup>7</sup> Applicant's comments on PLA16

<sup>8</sup> Applicant's comments on PLA-19

section 2 the purpose of the document and that paragraphs 2.1.6 and 2.17 state (emphasis added) “*The CBRA is required to be submitted to the Marine Management Organisation (MMO) as set out in separate deemed Marine Licence (dML) conditions contained within the DCO (Volume 3, Document 3.1)... Schedule 11 of the DCO (Transmission Assets Deemed Marine Licence) covers the export cables and requires a CBRA to be submitted as part of the Cable Specification and Installation Plan (CSIP) as set out in the following condition:*

*13(h)(ii) a detailed cable laying plan for the Order limits within that stage, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA and Trinity House) to be taken to ensure existing and future safe navigation is not compromised or similar such assessment to ascertain suitable burial depths and cable laying techniques, including cable protection”.*

- 2.16 If the CBRA is required to be submitted to the MMO under condition 13(h)(ii) then as set out at 13(1) there is a requirement for the MMO to approve the document in writing in consultation with, where relevant, Trinity House, the MCA, UK Hydrographic Office and relevant SNCB. As a separate point the PLA should also be a consultee of the MMO for the reasons noted above.
- 2.17 In relation to the Applicant’s comments about the definition of commence<sup>9</sup>, the point the PLA is making (notwithstanding that it considers that it should be able to approve activities) is that the DML only extends to licensable activities. Therefore, if an activity is not a licensable activity i.e. it is an exempt activity, it would not be controlled by the DML and could take place without the consent of the MMO. This reinforces the need for the PLA to have protective provisions to ensure that all future details for the activities which could impact the DWRs are approved.

### **3 OUTLINE MARINE WRITTEN SCHEMES OF INVESTIGATION (REP3-013)**

- 3.1 A new paragraph has been included in the outline Marine Written Schemes of Investigation [REP3-013] in relation to mitigation for geophysical anomalies of archaeological potential. This paragraph shows clear intent that items could be relocated (emphasis added):

*“6.7.17 Where items are being relocated from their original find spot to ensure that direct impact during construction activities can be avoided, strategies for relocation and methodologies for avoiding damage will be clearly outlined in the relevant MSs produced and submitted to the Archaeological Curators ahead of any archaeological works.”*

- 3.2 As set out by the PLA in its Written Representation [REP2-066] and in its Deadline 3 Response [REP3-035] the PLA would want to approve any pre-construction activities that could affect the DWRs because there may need to be restrictions on how the pre-construction activity can be undertaken. The PLA specifically cited the example of not relocating an archaeological find to or within a DWR. The Applicant has not ruled out doing this and the update to the Outline Marine Written Schemes of Investigation clearly demonstrates that items may be relocated from their original spot. Either the application documents need to be explicit that archaeological finds will not be relocated within or to the DWRs or the PLA must have protective provisions to ensure that any relocation that is proposed that could impact the DWRs is to an appropriate location that is agreed by the PLA so that it can be ensured that it will not have a detrimental impact on navigation. The PLA has recent experience of a developer wishing to relocate an archaeological find and the PLA had to refuse the developers proposed location because of the potential impact on navigation.

### **4 DRAFT DEVELOPMENT CONSENT ORDER (REP3-006)**

- 4.1 The PLA has no comments on the amendments made to the dDCO at Deadline 3 but would advise that since Deadline 3, the PLA and the Applicant have been able to agree onshore

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<sup>9</sup> Applicant’s comments on PLA-23

protective provisions for the benefit of the PLA. The PLA expects the agreed drafting to be included within an updated dDCO which is to be submitted to the examination at deadline 4.

- 4.2 The PLA and the Applicant have discussed the heavily amended version of the protective provisions (drafted for the PLA's) benefit that were received from the Applicant on the morning of ISH4. The PLA understands that a further amended draft will be sent to the PLA shortly. The PLA reiterates its position as set out above, that it is entirely appropriate for the PLA to have offshore protective provisions and that their scope should include approval of the Navigation Installation Plan, Cable Specification and Installation Plan and any activities, including pre-construction activities where they involve or impact on the DWRs.

## **5 MARINE MANAGEMENT ORGANISATION (REP3-029)**

- 5.1 The PLA welcomes the MMO's support as set out in REP3-029 and notes the MMO's deferral to the PLA on shipping and navigation concerns. As set out at paragraph 3.7.12 of the MMO's response, the PLA and the MMO are currently in discussions. The PLA understands that the MMO supports the PLA's request for protective provisions and the MMO and the PLA are also discussing amendments to the Deemed Marine Licence (Schedule 11 – Transmission Assets) so that the PLA is consulted as part of the MMO's approval process to enable the PLA and the MMO to collaborate on providing approvals.